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Iran and Its Encounters with the International Court of Justice

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IRAN AND ITS ENCOUNTERS WITH THE INTERNATIONAL COURT OF JUSTICE

NATALIE KLEIN*

Iran has been an active middle power that has engaged with the International Court of Justice in cases involving Iran's adversaries at critical points in its history. This engagement has spanned a period of almost 70 years and encompassed Iran's 1953 coup d'état, the 1978 Iranian Revolution, the 1980–88 Iran–Iraq War and current issues involving Iran's nuclear capabilities. This study draws on the Anglo–Iranian Oil Co case, the United States Diplomatic and Consular Staff in Tehran case, the Oil Platforms case and the current cases (Certain Iranian Assets, and Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights) to consider the Court's role in the peaceful resolution of these disputes involving Iran. The study considers the lessons from Iran's experiences in discerning why states turn to an international court for the resolution of their disputes.

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I INTRODUCTION

The Asia Pacific Group, as designated within the United Nations,[1] has not been highly reliant on international adjudication as a means to resolve disputes.[2] Yet, among Asian states participating at the International Court of Justice ('ICJ'),[3] Iran counts as one of the most active states before the Court.[4] Iran's engagement is further notable because it has engaged in litigation at the Court against strong adversaries at key moments in Iranian history. The stakes involved in each dispute have thus been considerable for Iran.

As part of a project on National Encounters with the International Court of Justice, this study of Iran seeks to place its experiences of international litigation before the ICJ within the frame of the broader disputes in which Iran was engaged at the time of each case. In doing so, I aim to demonstrate how international litigation can be deployed strategically as part of interstate relations,[5] even though the Court is inherently limited in its dispute settlement function. Dinah Shelton, for example, has observed four different functions of international courts: dispute settlement, compliance assessment, enforcement and legal advice.[6] Yet, as will be demonstrated in examining Iran's encounters at the Court, the need for a judicial organ to focus on legal matters necessarily means that broader political, economic and social differences that cause interstate conflict cannot always be resolved.

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1 'Regional Groups of Member States', *United Nations Department for General Assembly and Conference Management* (Web Page) <https://www.un.org/dgacm/en/content/regional-groups>, archived at <https://perma.cc/M4NH-Z72V>.

2 Veronica L Taylor and Michael Pryles, 'The Cultures of Dispute Resolution in Asia' in Michael Pryles (ed), *Dispute Resolution in Asia* (Kluwer Law International, 3rd ed, 2006) 1; MCW Pinto, 'Some Thoughts on "Asian" Approaches to International Dispute Resolution' in Steve Charnovitz, Debra P Steger and Peter van den Bossche (eds), *Law in the Service of Human Dignity: Essays in Honour of Florentino Feliciano* (Cambridge University Press, 2005) 350, 351–5.

3 Rodman Bundy surveyed this practice in 2014, noting a modest but increasing engagement in the region: Rodman R Bundy, 'Asian Perspectives on Inter-State Litigation' in Natalie Klein (ed), *Litigating International Law Disputes: Weighing the Balance* (Cambridge University Press, 2014) 148.

4 The extent of its participation is matched only by India. Both states have appeared before the Court six times: 'List of All Cases', *International Court of Justice* (Web Page) <https://www.icj-cij.org/en/list-of-all-cases>, archived at <https://perma.cc/F5XD-NBJM>; 'Pending Cases', *International Court of Justice* (Web Page) <https://www.icj-cij.org/en/pending-cases>, archived at <https://perma.cc/D7UP-H7QR>.

5 The use of strategic litigation before international courts is explored in Douglas Guilfoyle, 'The Chagos Archipelago before International Tribunals: Strategic Litigation and the Production of Historical Knowledge' (2021) 21(3) *Melbourne Journal of International Law* 749 ('The Chagos Archipelago before International Tribunals').

6 Dinah Shelton, 'Form, Function, and the Powers of International Courts' (2009) 9(2) *Chicago Journal of International Law* 537, 539.

Table 1 below summarises Iran's appearances before the ICJ in contentious cases:

Table 1: Cases Involving Iran at the ICJ[7]

Name of Case	Parties	Year Commenced	Year Concluded	Status of Legal Proceedings
Anglo–Iranian Oil Co	United Kingdom v Iran	1951	1952	Court determined no jurisdiction to proceed
United States Diplomatic and Consular Staff in Tehran	United States v Iran	1979	1981	Judgment on merits
Aerial Incident of 3 July 1988	Iran v United States	1989	1996	Discontinued (settlement agreement)
Oil Platforms	Iran v United States	1992	2003	Judgment on merits
Certain Iranian Assets	Iran v United States	2016	—	Pending (pleadings on merits)
Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights	Iran v United States	2018	—	Pending (pleadings on preliminary objections)

The ICJ initially had jurisdiction because Iran had previously declared acceptance of the compulsory jurisdiction of the Permanent Court of International Justice, which was transferred to the ICJ upon its creation.[8] Iran terminated this acceptance in 1951 after the United Kingdom relied upon it to commence proceedings against Iran.[9] Iran has continued to engage in international litigation at the ICJ by virtue of its acceptance of compromissory

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[7] Correct as of 30 December 2020.

[8] *Protocol of Signature Relating to the Statute of the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations*, opened for signature 16 December 1920, 104 LNTS 492 (entered into force 16 December 1920) 492–3; *Statute of the International Court of Justice* art 36(5).

[9] Stanimir A Alexandrov, *Reservations in Unilateral Declarations Accepting the Compulsory Jurisdiction of the International Court of Justice* (Martinus Nijhoff Publishers, 1995) 59.

clauses in treaties.[10] Notably, Iran has relied on the *Treaty of Amity, Economic Relations, and Consular Rights* ('*Treaty of Amity*'),[11] a bilateral treaty concluded between Iran and the United States in 1955, as the basis for the Court's jurisdiction in its three most recent cases.[12]

To reflect on Iran's encounters with the ICJ, I explore the circumstances of Iran's participation at the ICJ and consider why those encounters occurred,[13] as well as draw attention to the lessons emerging from the experience of litigating against more powerful states at the Court. Iran's experiences with the Court reflect, in some respects, the limits of the influence of the Court in relation to a state's pursuit of national policies. Nonetheless, Iran's experiences also reveal the opportunities that the Court presents in managing and contributing to the resolution of interstate disputes. These different elements emerge in highlighting the background to the cases and the context in which they arose and were argued before the Court, in the Court's decisions, as well as in the consequences that flowed from the cases. To this end, I discuss in Part II the *Anglo–Iranian Oil Co* case, the *United States Diplomatic and Consular Staff in Tehran* ('*Tehran Hostages*') case, the *Oil Platforms* case, the *Certain Iranian Assets* proceedings and the *Alleged Violations of the Treaty of Amity, Economic Relations, and Consular Rights* ('*Alleged Violations of the Treaty of Amity*') proceedings.[14]

For each of these cases, I draw on the pleadings and judgments of the ICJ, contemporaneous news reports and secondary analyses to consider how Iran has presented itself at the Court and its views on the Court proceedings. The pleadings include many documentary annexes that provide statements from political actors involved in the facts leading up to the cases at the time, as well as contemporaneous third-party reporting on the events at issue through different outlets, including at intergovernmental organisations, in the media and through bilateral or regional engagements. Language limitations have meant that I was not able to utilise Farsi sources, but I have considered the Court documentation submitted in French and not translated.

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[10] Iran may not be seen as embracing regimes that incorporate compulsory jurisdiction, as it remains a signatory to the *United Nations Convention on the Law of the Sea* rather than a party: 'United Nations Convention on the Law of the Sea', *United Nations Treaty Collection* (Web Page, 24 July 2021) <https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en>, archived at <https://perma.cc/7RME-LP2V>. Iran is also not yet a member of the World Trade Organization. Although it has previously sought full membership, it has been blocked from joining by the US. It currently has observer status: 'Members and Observers', *World Trade Organization* (Web Page) <https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm>, archived at <https://perma.cc/Z3RB-WP7Y>.

[11] *Treaty of Amity, Economic Relations, and Consular Rights*, United States–Iran, signed 15 August 1955, 284 UNTS 93 (entered into force 16 June 1957) art XXI(2) ('*Treaty of Amity*').

[12] As discussed below, the US has now terminated the *Treaty of Amity*: see below nn 198–200 and accompanying text.

[13] 'Encounters' is used here in the context described in the introduction to this Special Issue — namely, as an episodic event: see Hilary Charlesworth and Margaret A Young, 'National Encounters with the International Court of Justice: Introduction to the Special Issue' (2021) 21(3) *Melbourne Journal of International Law* 502.

[14] The only case not examined in detail is *Aerial Incident of 3 July 1988* because it was settled: 'Settlement Agreement', *Aerial Incident of 3 July 1988 (Iran v United States of America)* [1999] ICJ Pleadings 648. However, the timing and circumstances of that case are discussed in relation to the *Oil Platforms* case: see below Part II(C).

A lengthier study could engage with materials in national archives that have bearing on state decisions at the relevant times and could potentially interview lawyers or government officials involved in the cases, to the extent that confidentiality issues do not emerge. As these additional sources have not been included within this shorter study, the conclusions must remain tentative to some degree. Nonetheless, as the only study considering each of Iran's encounters at the ICJ, rather than only assessing the legal doctrine at issue or focusing on the specific historic circumstances of which a case formed part, the intention is to offer some views on the opportunities and obstacles experienced through all of Iran's encounters at the ICJ. Part III examines some specific lessons that may emerge from each of the cases. Part IV turns to the broader lessons indicated from Iran's varied encounters at the Court, including some reflections on experiences involving a less powerful state litigating against (much) more powerful states. While the Court has clearly provided some needed opportunities to further dispute resolution, Iran's encounters indicate that there are undoubtedly limits as to what it can achieve. Part V briefly concludes.

II IRANIAN CASES AT THE ICJ

As noted at the outset in Table 1, Iran has been involved in six contentious cases at the ICJ. In Iran's first two encounters with the Court, it was a respondent: the UK instituted the *Anglo–Iranian Oil Co* case, and the US submitted the *Tehran Hostages* case. Iran did not formally appear in either of these cases but limited its involvement to the submission of letters to the Court, briefly setting out its views on the case and the Court's jurisdiction. Iran subsequently instituted proceedings on four occasions against the US, fully participating in each of these cases: *Aerial Incident of 3 July 1988*, *Oil Platforms*, *Certain Iranian Assets* and *Alleged Violations of the Treaty of Amity*. Apart from *Aerial Incident of 3 July 1988*, which was settled, each of these cases is discussed in this Part. In each instance, I have sought to situate the case in its historical and political context both at the institution of ICJ proceedings and in the course of the case and its outcome. Only a summary of the legal questions is presented, as these elements have been addressed in doctrinal assessments of the

jurisprudence.[15] This approach seeks to foreground Iran's interaction with the Court and with the international litigation at issue as the basis to draw out possible lessons from Iran's encounters with the ICJ.

A *The Anglo–Iranian Oil Co Case*

The antecedents to this case lie in the UK's deep involvement in the development of Iran's oil industry from the early 20th century. An initial agreement was concluded in 1901 between a British national and the then Persian government and continued until 1932.[16] During this time, the Anglo–Persian Oil Company was formed with close involvement of the British government, which led to concerns about the extent of British interference in the oil industry and Persia's foreign affairs.[17] Under the agreement, Persia was to be paid a 16% royalty of the profits earned by the company, but it was alleged that no such payments were made before 1919 and only 13% was paid annually thereafter.[18] Persia's attempts to arbitrate in accordance with the agreement were thwarted at the time.[19] The agreement was terminated in 1932, and, following Britain's appeal to the Council of the League of Nations,[20] new terms were negotiated between (what became) Iran and the Anglo–Iranian Oil Company ('AIOC').

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[15] See, eg, Charles G Fenwick, 'The Order of the International Court of Justice in the Anglo–Iranian Oil Company Case' (1951) 45(4) *American Journal of International Law* 723; Henri Rolin, 'The International Court of Justice and Domestic Jurisdiction: Notes on the Anglo–Iranian Case' (1954) 8(1) *International Organization* 36; DP O'Connell, 'A Critique of the Iranian Oil Litigation' (1955) 4(2) *International and Comparative Law Quarterly* 267; Amir Rafat, 'The Iran Hostage Crisis and the International Court of Justice: Aspects of the *Case concerning United States Diplomatic and Consular Staff in Tehran*' (1981) 10(3) *Denver Journal of International Law and Policy* 425; Leo Gross, 'The Case concerning United States Diplomatic and Consular Staff in Tehran: Phase of Provisional Measures' (1980) 74(2) *American Journal of International Law* 395; Christopher Greenwood, 'The Iranian Hostages Case' (1980) 39(2) *Cambridge Law Journal* 239; Kazimierz Grzybowski, 'The Regime of Diplomacy and the Tehran Hostages' (1981) 30(1) *International and Comparative Law Quarterly* 42; Andrew Garwood-Gowers, 'Case concerning Oil Platforms (Islamic Republic of Iran v United States of America): Did the ICJ Miss the Boat on the Law on the Use of Force?' (2004) 5(1) *Melbourne Journal of International Law* 241; Malcolm D Evans, 'Oil Platforms (Islamic Republic of Iran v United States of America): Preliminary Objections' (1997) 46(3) *International and Comparative Law Quarterly* 693; Caroline E Forster, 'The *Oil Platforms* Case and the Use of Force in International Law' (2003) 7(2) *Singapore Journal of International and Comparative Law* 579; Philipp Janig and Sara Mansour Fallah, '*Certain Iranian Assets*: The Limits of Anti-Terrorism Measures in Light of State Immunity and Standards of Treatment' (2016) 59 *German Yearbook of International Law* 355; Daniel Franchini, 'State Immunity as a Tool of Foreign Policy: The Unanswered Question of *Certain Iranian Assets*' (2020) 60(2) *Virginia Journal of International Law* 433.

[16] 'Memorial Submitted by the Government of the United Kingdom of Great Britain and Northern Ireland', *Anglo–Iranian Oil Co (United Kingdom v Iran)* [1952] ICJ Pleadings 64, 70–1 [5(a)] ('UK Memorial, *Anglo–Iranian Oil Co*').

[17] Sundhya Pahuja and Cait Storr, 'Rethinking Iran and International Law: The *Anglo–Iranian Oil Company Case* Revisited' in James Crawford et al (eds), *The International Legal Order: Current Needs and Possible Responses* (Brill Nijhoff, 2017) 53, 57–8.

[18] 'Communication from the Minister of Foreign Affairs of Iran to the President of the International Court of Justice, Dated 29th June 1951, with Three Annexes', *Anglo–Iranian Oil Co (United Kingdom v Iran)* [1952] ICJ Pleadings 672, 673–4 ('Iranian Communication, *Anglo–Iranian Oil Co*').

[19] Ibid 673.

[20] Pahuja and Storr (n 17) 60.

In 1933, the AIOC entered into a concession contract with Iran ('*1933 Concession Agreement*') whereby the AIOC received an exclusive right 'to search for an[d] extract petroleum as well as to refine or treat in any other manner and render suitable for commerce the petroleum obtained by it', as well as a non-exclusive right 'to transport petroleum, to refine or treat it in any other manner and to render it suitable for commerce, as well as to sell it in Persia and to export it'.[21] In return, an annual royalty was to be paid to Iran, and arrangements were made for payments in relation to income tax and limited profit sharing.[22] The royalty amount was less than what was being paid to other governments in the region at the time.[23]

In the immediate prelude to the *Anglo–Iranian Oil Co* case, both the Soviet Union and the UK endeavoured to maintain influence within Iran.[24] In particular, the communist party (the Tudeh Party) was gaining greater control within the Iranian Parliament, and the Iranian Prime Minister at the time sought to manage both the communist party and an increasingly nationalist influence.[25] The Soviet actions in Azerbaijan in the years following World War II had triggered concerns for key stakeholders in the AIOC, who did not want to see Soviet control over important oil reserves extended.[26] While elements within the British government sought a policy of noninterference in Iranian politics, the financial imperatives of the AIOC and concerns about communist ideology taking hold in Iran, along with Soviet influence, resulted in greater efforts to engage (interfere) with Iranian policies.[27]

The UK maintained extensive control over the world's oil supply at that time. One estimate is that the AIOC controlled about 31% of Middle Eastern oil stock in the years following World War II.[28] In 1950, the AIOC was said to account for 14% of the world's oil production.[29] The British government was the largest shareholder of the AIOC, and the AIOC was commonly seen as a reflection of the government and its policies.[30] In its initial communications to the ICJ, Iran underlined the unfair terms of the *1933 Concession Agreement*, the conditions under which agreement was reached and how it had operated to the disadvantage

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[21] *Convention Concluded between the Imperial Government of Persia and the Anglo–Persian Oil Company, Limited*, signed 29 April 1933 (entered into force 29 May 1933) art 1.

[22] Article 10 details the compensation for Iran, which was to be a minimum of GBP750,000 per year. See also Samuel Nakasian, 'The Anglo–Iranian Oil Case: A Problem in International Judicial Process' (1953) 41(4) *Georgetown Law Journal* 459, 465.

[23] See Ian Speller, 'A Splutter of Musketry? The British Military Response to the Anglo–Iranian Oil Dispute, 1951' (2003) 17(1) *Contemporary British History* 39, 40–1; ibid 466.

[24] For general discussion, see Alexander Nicholas Shaw, '"Strong, United and Independent": The British Foreign Office, Anglo–Iranian Oil Company and the Internationalization of Iranian Politics at the Dawn of the Cold War, 1945–46' (2016) 52(3) *Middle Eastern Studies* 505. See also Pahuja and Storr (n 17) 61.

[25] Shaw (n 24) 512–15.

[26] See ibid 510–11.

[27] See ibid 512–15.

[28] Ibid 507.

[29] Jolanta Sierakowska-Dyndo, 'Polish Judge Defended the Iranian Stance: Anglo–Iranian Dispute in 1951' [2019] (Special Issue) *Studia Litteraria Universitatis Iagellonicae Cracoviensis* 231, 235.

[30] See Neveen Abdelrehim, Josephine Maltby and Steven Toms, 'Corporate Social Responsibility and Corporate Control: The Anglo–Iranian Oil Company, 1933–1951' (2011) 12(4) *Enterprise and Society* 824, 826, 833.

of Iran.[31] For Iran, the issue fundamentally concerned its sovereignty and sovereign control over its natural resources.[32]

Nationalist sentiment surged within the Iranian Parliament and Senate at the start of the 1950s.[33] An oil nationalisation law was adopted in 1951 shortly before the appointment of Prime Minister Mohammad Musaddiq.[34] A further declaration provided that the entire revenue derived from oil would be 'indisputably due' to Iran.[35] Although the UK and members of the AIOC sought to negotiate with Iran,[36] no agreement on continued British involvement in the operation and management control of the AIOC could be reached.[37]

In response to the introduction of the nationalisation legislation, the UK engaged in diverse efforts to protect its interests.[38] These efforts included triggering the arbitration clause within the *1933 Concession Agreement*,[39] direct negotiations,[40] initiating discussions at the UN Security Council,[41] military threats,[42] mediation involving an American representative of the US President,[43] precipitating negotiations through the World Bank[44] and instituting proceedings at the ICJ. To institute proceedings, the UK relied on Iran's earlier acceptance of jurisdiction to the Permanent Court of International Justice. The UK argued that Iran's unilateral annulment of *1933 Concession Agreement* and its refusal to

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31 'Iranian Communication, *Anglo–Iranian Oil Co*' (n 18) 675–7. Further disadvantages are outlined in ibid 837–8.

32 See Akhtar Adil Razwy, 'The Anglo–Iranian Oil Dispute' (1953) 6(2) *Pakistan Horizon* 75, 77–8.

33 Katayoun Shafiee, 'Technopolitics of a Concessionary Contract: How International Law Was Transformed by Its Encounter with Anglo–Iranian Oil' (2018) 50(4) *International Journal of Middle Eastern Studies* 627, 630; Pahuja and Storr (n 17) 61.

34 Musaddiq is also spelled as Mosadegh or Mossadeq in different sources.

35 'Application Instituting Proceedings', *Anglo–Iranian Oil Co (United Kingdom v Iran)* [1952] ICJ Pleadings 8, annex C ('Text of the Iranian Oil Nationalization Act of the 1st May, 1951') art 4.

36 See Shafiee (n 33) 633.

37 'UK Memorial, *Anglo–Iranian Oil Co*' (n 16) 67–9 [2]. When negotiations broke down, Iran cancelled the residence permits of the British staff of the AIOC: at 69 [2A].

38 Some of which are outlined in the UK's application instituting proceedings: 'UK Application Instituting Proceedings', *Anglo–Iranian Oil Co (United Kingdom v Iran)* [1952] ICJ Pleadings 810–11 [5]–[7] ('UK Application Instituting Proceedings, *Anglo–Iranian Oil Co*').

39 Shafiee (n 33) 631; ibid 10 [5].

40 'Request for the Indication of Interim Measures of Protection', *Anglo–Iranian Oil Co (United Kingdom v Iran)* [1952] ICJ Pleadings 45, app ('Appendix to the Request of the Government of the United Kingdom for the Indication of Provisional Measures Dated the 22nd June 1951'), outlining the varied terms of negotiations between the parties.

41 Referenced in Iran's Preliminary Observations: 'Observations préliminaires: Refus du Gouvernement Imperial de reconnaître la competence de la Cour' [Preliminary Observations: Refusal by the Imperial Government to Recognise the Jurisdiction of the Court], *Anglo–Iranian Oil Co (United Kingdom v Iran)* [1951] ICJ Pleadings 281 ('Iranian Preliminary Observations, *Anglo–Iranian Oil Co*'). This intervention came when the UK sought enforcement of the Court's provisional measures order. For discussion, see Kamrouz Pirouz, 'Iran's Oil Nationalization: Musaddiq at the United Nations and His Negotiations with George McGhee' (2001) 21(1–2) *Comparative Studies of South Asia, Africa and the Middle East* 110, 110–12.

42 With the positioning of British warships in the vicinity, see 'Iranian Communication, *Anglo–Iranian Oil Co*' (n 18) 682–4. See also Speller (n 23) 44–55.

43 'Iranian Preliminary Observations, *Anglo–Iranian Oil Co*' (n 41) annex VI, 312–15. See also Reza Ghasimi, 'Iran's Oil Nationalization and Mossadegh's Involvement with the World Bank' (2011) 65(3) *Middle East Journal* 442, 443.

44 See Razwy (n 32) 81–3.

follow the dispute settlement procedure set out in that agreement constituted a denial of justice against a British national and as such was an international wrong against the UK.[45]

The UK's application requesting provisional measures outlined, in an annex, the propaganda in Iran ('inflammatory speeches, broadcasts and articles')[46] subsequent to the adoption of Iran's nationalisation law.[47] These comments did not reflect on the ICJ proceedings but were focused on the activities of the AIOC and the British government in Iran, and the negative perceptions and poor influence of those activities. In this application, the UK drew attention to concerns such as the possible loss of personnel, interference with management and overall disruption to the operations of the AIOC.[48] Clearly, there were significant economic imperatives at play for the UK.

Countering the British narrative, Iran presented media reports to the ICJ illustrating Iranian efforts to maintain the oil operations and preserve the conditions of all workers associated with the industry.[49] Iran contextualised its arguments by referring at the outset to great power domination[50] and characterising the case as

> purely based on the greed and selfishness of an English company against a peace-loving and weak oriental nation, which has been submitted through an incorrect appeal by the British Government, beyond the jurisdiction of the Court.[51]

As a legal matter, Iran emphasised that the question was one of domestic jurisdiction and hence beyond the competence of the ICJ. Iran did not appear before the Court[52] but disputed the Court's jurisdiction.

Prior to the determination of the question of jurisdiction, the UK requested provisional measures pending the resolution of the dispute on the merits. In so ordering, the ICJ did not consider any questions of jurisdiction but simply stated that 'it cannot be accepted *a priori*' that the UK's claims fell 'completely outside the scope of international jurisdiction'.[53] Without further examination of this issue,[54] the Court determined that 'the existing state of affairs' warranted the

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45 'UK Application Instituting Proceedings, *Anglo–Iranian Oil Co*' (n 38) 12 [9].

46 'Request for the Indication of Interim Measures of Protection', *Anglo–Iranian Oil Co (United Kingdom v Iran)* [1952] ICJ Pleadings 45, 58.

47 Ibid 58–62.

48 Ibid 47–50 [8].

49 'Iranian Communication, *Anglo–Iranian Oil Co*' (n 18) 687–92.

50 Similarly, before the UN Security Council, Prime Minister Musaddiq underlined how British control of the oil industry in Iran had not contributed to Iran's development nor to the wellbeing of the Iranian people: *Report of the Security Council to the General Assembly Covering the Period from 16 July 1951 to 15 July 1952*, UN GAOR, 7th sess, Supp No 2, UN Doc A/2167 (20 October 1952) 20 [151], cited in Pahuja and Storr (n 17) 66 n 68.

51 'Iranian Communication, *Anglo–Iranian Oil Co*' (n 18) 673.

52 There is a remark in Iran's communication to the ICJ that there was insufficient time for the Iranian officials to obtain visas: ibid 678. This suggestion raises questions about equality of access to the Court, especially for a state much less familiar with the Court's processes.

53 *Anglo–Iranian Oil Co (United Kingdom v Iran) (Provisional Measures)* [1951] ICJ Rep 89, 93 ('*Anglo–Iranian Oil Co (Provisional Measures)*'). Judges Winiarski and Badawi Pasha took the position in their dissenting opinion that the standard should be that it is 'reasonably probable' that the Court has jurisdiction: at 96.

54 Beyond remarking that the determination was not to prejudge the question of jurisdiction: ibid 93. For discussion, see Fenwick (n 15) 724–7.

indication of provisional measures.[55] The Court considered that the parties should take no steps that prejudiced the other party or aggravated the dispute and, as such, that the AIOC should be able to continue its operations as was the case before Iran's nationalisation law was adopted.[56] A board was also to be established between the parties to ensure that the AIOC's operation was consistent with the Court's order.[57] Iran did not adhere to the Court's order[58] but continued discussions with the World Bank and other stakeholders, including the US, as to the resumption of oil production.[59]

At the jurisdictional stage, the ICJ determined that it lacked jurisdiction to resolve the dispute.[60] This outcome reduced the external pressure on Iran to modify its courses of action in relation to the AIOC. Consequently, the UK pursued alternative avenues to protect its perceived interests in the AIOC, including through alliances with the conservative movement in Iran and the US.[61] For the UK, the decision of the Court was that it lacked competence to decide rather than a finding that Iran's actions should be considered lawful. The UK's failure at the ICJ has been linked to subsequent violence in Iran and the CIA-sponsored coup d'état, Operation Ajax, that occurred in 1953 and reinstalled the Shah of Iran with greater constitutional power.[62]

B *The Tehran Hostages Case*

The background to the *Tehran Hostages* case is often traced to the overthrow of the Musaddiq government and return of the Shah of Iran to power.[63] Due to its own oil interests and engagement in the Middle East, the US was deeply involved in this change of power,[64] and the Shah's leadership provided a means for US and British interests to receive greater protection and advancement.[65]

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55 *Anglo–Iranian Oil Co (Provisional Measures)* (n 53) 93.

56 Ibid 93–4.

57 Ibid 94.

58 It was in this context that the UK turned to the UN Security Council for resolution of the dispute, as it sought the enforcement of the Court's order under art 94 of the *Charter of the United Nations*. For discussion, see Yuen-li Liang, 'The Question of Domestic Jurisdiction in the Anglo–Iranian Oil Dispute before the Security Council' (1952) 46(2) *American Journal of International Law* 272.

59 Razwy (n 32) 81–5.

60 *Anglo–Iranian Oil Co (United Kingdom v Iran) (Preliminary Objection)* [1952] ICJ Rep 93.

61 Pahuja and Storr (n 17) 68–9. An agreement was reached between Iran and the AIOC in 1954 to restore its assets and some rights. For discussion of this agreement, see Abolbashar Farmanfarma, 'The Oil Agreement between Iran and the International Oil Consortium: The Law Controlling' (1955) 34(2) *Texas Law Review* 259, 259–62.

62 Shafiee (n 33) 629; Pahuja and Storr (n 17) 54–5.

63 Iran argued for this perspective in its communications to the Court: see below nn 93–6 and accompanying text. See, eg, *United States Diplomatic and Consular Staff in Tehran (United States of America v Iran) (Judgment)* [1980] ICJ Rep 3, 60–1 (Judge Tarazi) ('*Tehran Hostages*').

64 See James P Terry, 'The Iranian Hostages Crisis: International Law & United States Policy' (1982) 32 *JAG Journal* 31, 33–6; Valerie J Munson, 'The Case concerning United States Diplomatic and Consular Staff in Tehran' (1981) 11(3) *California Western International Law Journal* 543, 546 n 19.

65 'Iran under the Shah, in short, was one of America's best, most important, and most loyal friends in the world': Henry Kissinger, *White House Years* (Little, Brown and Company, 1979) 1262, quoted in *Tehran Hostages* (n 63) 61–2 (Judge Tarazi). See also Terry (n 64) 35–6.

The UK envisaged that the change in power would restore its losses from Iran's nationalisation policy, whereas the US held concerns about Soviet influence or control within the Iranian Parliament.[66] The Shah's regime was also known for economic dislocation wrought on the local population and brutal human rights violations.[67] Discontent over the Shah's exercise of power and treatment of the Iranian population led to the Iranian Revolution in 1978.[68] The Revolution caused the Shah of Iran to flee from Iran, and he was ultimately admitted to the US for medical treatment.[69] In Iran, Ayatollah Ruhollah Khomeini came into power and instituted an Islamic system of laws and government.[70]

Partly as a response to the US providing shelter to the Shah of Iran, demonstrations outside the US Embassy in Tehran and consulates in Iran escalated.[71] The US Embassy and its consulates in Shiraz and Tabriz were seized by demonstrators in November 1979[72] — their actions endorsed by the Ayatollah Khomeini — and 66 American nationals were taken hostage.[73] Within Iran, the US Embassy was perceived as a centre for espionage against Iran, as well as a symbol of superpower imperialism.[74] Iranian authorities were only prepared to release the US hostages if the US extradited the Shah back to Iran for trial and returned his property.[75]

From the time that the US diplomatic and consular premises were occupied and hostages taken, efforts at international dispute resolution were attempted through different avenues, including at the ICJ.[76] These efforts included attempts at negotiations,[77] diplomatic protests,[78] debates in the UN Security Council,[79]

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66 Pahuja and Storr (n 17) 73.

67 See, eg, *Tehran Hostages* (n 63) 57 [9] (President Morozov). James Terry writes of US efforts to improve Iran's human rights record and socio-economic development: Terry (n 64) 37–9.

68 Terry (n 64) 40.

69 *Tehran Hostages* (n 63) 11 [15].

70 For discussion on Iranian policies during this time, see Maziar Behrooz, 'Iran after Revolution (1979–2009)' in Touraj Daryaee (ed), *The Oxford Handbook of Iranian History* (Oxford University Press, 2012) 365; Eva Patricia Rakel, 'Iranian Foreign Policy since the Iranian Islamic Revolution: 1979–2006' (2007) 6(1–3) *Perspectives on Global Development and Technology* 159, 166–70.

71 An attack on the US Embassy had earlier occurred in February 1979, but in that instance, Iran sent in its officials to remove the attackers, apologised and sought to institute actions to prevent any recurrence: 'Memorial of the Government of the United States of America', *United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)* [1980] ICJ Pleadings 121, 126 n 5 ('US Memorial, *Tehran Hostages*').

72 'Application Instituting Proceedings Submitted by the Government of the United States of America', *United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)* [1980] ICJ Pleadings 1, 3 ('US Application Instituting Proceedings, *Tehran Hostages*').

73 Ultimately, 52 remained in captivity until they were released over a year later: Anthea Jeffery, 'The American Hostages in Tehran: The ICJ and the Legality of Rescue Missions' (1981) 30(3) *International and Comparative Law Quarterly* 717, 717.

74 'US Memorial, *Tehran Hostages*' (n 71) 129–30, 134–6. Demonstrations and attacks against the embassies of the UK, Iraq and the Soviet Union occurred at a similar time, but these actions were quelled by Iranian authorities: *Tehran Hostages* (n 63) 13 [20].

75 *Tehran Hostages* (n 63) 34 [73].

76 For discussion of these varied efforts from the US perspective, see Michael P Malloy, 'The Iran Crisis: Law under Pressure' [1984] *Wisconsin International Law Journal* 15.

77 'US Memorial, *Tehran Hostages*' (n 71) 136–7.

78 Ibid 137–8.

79 SC Res 457, 2178th mtg, UN Doc S/RES/457 (4 December 1979); SC Res 461, 2184th mtg, UN Doc S/RES/461 (31 December 1979).

appeals by the President of the General Assembly,[80] a fact-finding mission established by the UN Secretary-General,[81] a far-reaching sanctions regime instituted unilaterally by the US against Iran,[82] mediation through officials from countries such as Switzerland[83] and mediation through the good offices of the Algerian President.[84] This last initiative resulted in the *Algiers Accords of January 19, 1981* ('*Algiers Accords*'), which provided, inter alia, for the removal of sanctions, the return of the US hostages and the creation of the Iran–United States Claims Tribunal.[85]

As with the *Anglo–Iranian Oil Co* case, the *Tehran Hostages* case at the ICJ was one of many great power responses to political developments in Iran — in this instance, the Iranian Revolution and its repercussions, including the hostage crisis. The US instituted proceedings seeking provisional measures and alleging violations of four treaties: the *Vienna Convention on Diplomatic Relations*,[86] the *Vienna Convention on Consular Relations*,[87] the *Treaty of Amity*[88] and the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*.[89] The US requested that the relevant premises be restored, that the hostages be released and allowed safely out of the country and that those responsible either be prosecuted or extradited to the US.[90] Compensation was further sought as reparations.[91]

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80 'US Memorial, *Tehran Hostages*' (n 71) annex 44 ('Statements by the President of the United Nations General Assembly, 9 November and 20 November 1979') 221–2.

81 A Commission of Inquiry was established in February 1980 to hear Iran's grievances and allow for the resolution of the hostage crisis: *Tehran Hostages* (n 63) 16 [29], 20–4 [39]–[43]. See also Rafat (n 15) 445–6.

82 'US Memorial, *Tehran Hostages*' (n 71) 140.

83 Randa M Slim, 'Small-State Mediation in International Relations: The Algerian Mediation of the Iranian Hostage Crisis' in Jacob Bercovitch and Jeffrey Z Rubin (eds), *Mediation in International Relations: Multiple Approaches to Conflict Management* (Palgrave Macmillan, 1992) 206, 206.

84 Ibid 207.

85 See *Declaration of the Government of the Democratic and Popular Republic of Algeria*, signed 19 January 1981, (1981) 20 ILM 224 ('*Algerian Declaration*'); *Declaration of the Government of the Democratic and Popular Republic of Algeria concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran*, signed 19 January 1981, (1981) 20 ILM 230; *Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with Respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria*, signed 19 January 1981, (1981) 20 ILM 229; *Escrow Agreement*, signed 20 January 1981, (1981) 20 ILM 234. For discussion of the settlement, see Malloy (n 76) 84–96.

86 *Vienna Convention on Diplomatic Relations*, opened for signature 18 April 1961, 500 UNTS 95 (entered into force 24 April 1964).

87 *Vienna Convention on Consular Relations*, opened for signature 24 April 1963, 596 UNTS 261 (entered into force 19 March 1967).

88 *Treaty of Amity* (n 11).

89 *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, opened for signature 14 December 1973, 1035 UNTS 167 (entered into force 20 February 1977).

90 'US Application Instituting Proceedings, *Tehran Hostages*' (n 72) 8.

91 Ibid.

In response, Iran again limited its engagement with the ICJ, sending in a brief letter at each stage of proceeding[92] but not submitting any counter-memorial nor appearing for oral arguments. Iran's communications to the Court attempted to contextualise the specific dispute at the ICJ in the broader relations existing between Iran and the US,[93] including the

> continual interference by the United States in the internal affairs of Iran, the shameless exploitation of [Iran], and numerous crimes perpetrated against the Iranian people, contrary to and in conflict with all international and humanitarian norms.[94]

In this setting, Iran viewed the hostages as a 'marginal and secondary aspect' of the conflict that existed between Iran and the US at that time.[95] Additionally, Iran considered the issue to be one wholly within its national jurisdiction.[96] For the purposes of the proceedings before the ICJ, these arguments could be viewed as objections to the admissibility of the dispute.[97]

The ICJ rejected Iran's objections to jurisdiction and to the admissibility of the dispute and considered that the circumstances warranted the indication of provisional measures.[98] The Court unanimously indicated that Iran should immediately restore the US premises at issue to the exclusive use of the US, that all hostages be released and that Iran should respect the protection, immunities and privileges of the US diplomatic and consular staff.[99] Iran promptly rejected the Court's provisional measures order through a statement of its Foreign Minister that the 'prefabricated verdict of the Court was clear to us in advance; for this reason Iran's Chargé d'Affaires at The Hague was ordered to officially reject the decision of The Hague Court'.[100]

The case proceeded to a determination on the merits, albeit without the participation of Iran. At the merits stage, the ICJ confirmed its jurisdiction under both the *Vienna Convention on Diplomatic Relations* and the *Vienna Convention on Consular Relations*,[101] as well as confirming that jurisdiction existed under

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92 See *United States Diplomatic and Consular Staff in Tehran (United States of America v Iran) (Provisional Measures)* [1979] ICJ Rep 7, 10–11 [8] ('*Tehran Hostages (Provisional Measures)*'); *Tehran Hostages* (n 63) 8–9 [10].

93 Iran argued that the US application could not be 'divorced from its proper context, namely the whole political dossier of the relations between Iran and the United States over the last 25 years': *Tehran Hostages* (n 63) 9 [10].

94 *Tehran Hostages (Provisional Measures)* (n 92) 11 [8]; *Tehran Hostages* (n 63) 8 [10].

95 *Tehran Hostages (Provisional Measures)* (n 92) 11 [8]. See also *Tehran Hostages* (n 63) 8 [10].

96 *Tehran Hostages (Provisional Measures)* (n 92) 11 [8]:

> Iran respectfully draws the attention of the Court to the deep-rootedness and the essential character of the Islamic revolution of Iran, a revolution of a whole oppressed nation against its oppressors and their masters; any examination of the numerous repercussions thereof is a matter essentially and directly within the national sovereignty of Iran …

See also *Tehran Hostages* (n 63) 8 [10].

97 See Rafat (n 15) 443; Greenwood (n 15) 242.

98 *Tehran Hostages (Provisional Measures)* (n 92) 17 [30]–[31].

99 Ibid 20–1 [47].

100 'US Memorial, *Tehran Hostages*' (n 71) 139. The Foreign Minister was also quoted as describing the order as 'absolutely ridiculous': MW Janis, 'The Role of the International Court in the Hostages Crisis' (1981) 13(2) *Connecticut Law Review* 263, 276.

101 *Tehran Hostages* (n 63) 26 [49].

the *Treaty of Amity*.[102] The latter agreement provided protection to the two US nationals held hostage who did not have either diplomatic or consular status.[103] Although Iran had been critical of US actions in Tehran in its communication to the Court,[104] the Court instead suggested that it was incumbent on Iran to avail itself of the opportunity available to submit pleadings or counterclaims in relation to its concerns against US actions in Iran.[105] Although Iran reiterated its concerns about US interference in Iranian domestic affairs at the merits stage of the dispute, the Court rejected these views in the same terms as its provisional measures order.[106]

Iran was held responsible for its failure to provide protection to the embassy, consulates, staff and archives.[107] The ICJ observed that, following the occupation of the diplomatic and consulate premises, Iran had responsibility to restore the status quo but did not take any such steps.[108] Ayatollah Khomeini had instead endorsed the actions of the militants and sought to maintain the hostage situation until the US agreed to the return of the Shah to Iran.[109] Consequently, the Court found that the 'approval given to these facts by the Ayatollah Khomeini and other organs of the Iranian State, and the decision to perpetuate them, translated continuing occupation of the Embassy and detention of the hostages into acts of that State'[110] for which Iran was internationally responsible.[111]

Iran did not comply with the ICJ's judgment. Iranian officials suggested that traditional principles of international law did not apply to revolutionary regimes,[112] even though the Court's determinations largely aligned with Islamic understandings of international law.[113] Iran maintained that the hostages were spies and should be tried under Iranian law, irrespective of the existing strictures of any international diplomatic law.[114] Although Iran released women and African American hostages two weeks after they were seized on the basis that

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102 Ibid 28 [54].

103 Ibid 26–7 [50]. The Court further considered that it was not necessary to determine if it also had jurisdiction under the *Convention for the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*: at 28 [55].

104 Ibid 19 [35].

105 *Tehran Hostages (Provisional Measures)* (n 92) 15 [24]; *Tehran Hostages* (n 63) 20 [37].

106 *Tehran Hostages (Provisional Measures)* (n 92) 15 [23]; *Tehran Hostages* (n 63) 18–20 [34]–[38].

107 *Tehran Hostages* (n 63) 30 [61], 32 [67].

108 Ibid 33 [69]–[70].

109 Ibid 34 [73].

110 Ibid 35 [74].

111 Ibid 35–6 [76]–[77].

112 Brian J McCoy, 'The International Court of Justice: United States v Iran' (1980) 9(2) *Denver Journal of International Law and Policy* 277, 279 n 17, citing a statement of Ayatollah Mohammad Beheshti. See also Michael M Gunter and Sanford R Silverburg, 'Violating the Inviolable: The Iranian Hostage Case and Its Implications' (1981) 5(1) *Journal of South Asian and Middle Eastern Studies* 52, 52–3, quoting Iranian sources; Matthew Neuhaus and Gregory Hammond, 'Diplomatic Privileges and the International Court of Justice: Protection or Platitudes?' (1982) 9(3) *Sydney Law Review* 649, 663, commenting: 'Iran's attitude over the United States hostages was to some extent an aberration explicable in terms of the special circumstances of the revolution in that country.'

113 See Muhammad-Basheer A Ismail, 'The 1979 United States–Iran Hostage Crisis Reviewed from an Islamic International Law Perspective' (2013) 42(1) *Denver Journal of International Law and Policy* 19, 36–40.

114 McCoy (n 112) 280.

they were not spies,[115] no domestic trials were ever undertaken. With the signing of the *Algiers Accords*, the case at the ICJ did not progress to the reparations phase.[116] Although the discontinuation of the case was part of the overall settlement, it appears that the unfreezing of Iranian assets under US control and the establishment of the claims mechanism were of greater significance than the prospect of a reparations hearing at the Court.[117]

The decision of the ICJ was ultimately quite narrow given the specific claims presented by the US and the failure of Iran to engage in the proceedings. Questions may be raised as to whether such a limited legal perspective is appropriate given the highly politicised nature of the dispute and the importance of its historical antecedents.[118] Even with a lens that focused on the issues of diplomatic law, Iran's reference to the 1953 coup d'état could have opened an investigation into the use of the US Embassy by the Central Intelligence Agency to support the overthrow of the Iranian government of the time.[119] While this approach might have better delivered 'equal justice' within what the Court described as a 'self-contained' regime,[120] Iran's non-participation did not provide the Court with sufficient grist for it to proceed in resolving this claim. Instead, the US considered it vital to secure declarations from the Court to deter similar violations of diplomatic law in the future and reinforce the importance of diplomatic principles in international relations.[121]

Iran's Foreign Minister emphasised that 'if this issue [of the hostages] were to be appraised, all of its parts should be appraised. Hence, we do not recognize the legitimacy of the court in appraising one part of the issue.'[122] In its judgment, the ICJ evinced awareness of this broader setting of the Iranian Revolution by acknowledging that there were political dimensions to the dispute, although it ultimately focused on distinct legal issues.[123] The Court's influence in resolving the dispute between the two states was reduced as a result. Iran recognised that the hostages were a bargaining tool in its interactions with the US in seeking to recover the Shah's assets and, subsequently, in securing Iran's frozen assets.

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115 *Tehran Hostages* (n 63) 13 [21], 34 [73].

116 In the Agreement, the US agreed to withdraw all claims pending against Iran at the ICJ: *Algerian Declaration* (n 85) 227 (para 11). For discussion, see Gerhard Wegen, 'Discontinuance of International Proceedings: The Hostages Case' (1982) 76(4) *American Journal of International Law* 717, 731–6.

117 Janis (n 100) 278. But see Leo Gross, 'Underutilization of the International Court of Justice' (1986) 27(2) *Harvard International Law Journal* 571, 590, describing the relinquishment of the US claim as 'a major concession'.

118 Rafat (n 15) 453–4. See also Richard Falk, 'The Iran Hostage Crisis: Easy Answers and Hard Questions' (1980) 74(2) *American Journal of International Law* 411, 412–13.

119 Rafat (n 15) 455. US interference or espionage may also have provided legal justification for Iran to suspend its treaty obligations: Ismail (n 113) 29.

120 Rafat (n 15) 456.

121 BVA Röling, 'Aspects of the Case concerning United States Diplomatic and Consular Staff in Tehran' (1980) 11 *Netherlands Yearbook of International Law* 125, 135, citing statements of US counsel in the case. See also Greenwood (n 15) 241, discussing the importance of the ICJ in affirming the rules of diplomatic immunity.

122 'US Memorial, *Tehran Hostages*' (n 71) annex 47 ('Excerpt from an Interview with Foreign Minister Gotbzadeh. FBIS, Daily Report, 18 December 1979, pp 2–3') 226.

123 *Tehran Hostages (Provisional Measures)* (n 92) 15–16 [22]–[26]. See also *Tehran Hostages* (n 63) 18 [34].

Only a broader dispute settlement process could achieve a meaningful result for either party.

C *The Oil Platforms Case*

In the years following the Iranian Revolution, the US continued to pursue a range of policies within the Middle East to support its allies and interests. For Iran, the Revolution coincided with Iraqi efforts to denounce a bilateral 1975 border treaty[124] and increased tension between the two countries over territorial disputes and the treatment of minority groups within Iran.[125] Iraq formally abrogated their border treaty in 1980 and commenced an armed offensive against Iran.[126] During the Iran–Iraq War, the US provided support to Saddam Hussein's regime in Iraq, although it also continued to sell weapons to Iran.[127] Iran considered the conflict an 'imposed war' whereby Western powers sided with Iraq's secular government against the theological government in Iran.[128] The conflict was terminated by a ceasefire agreement in 1988.[129]

Of international concern during the Iran–Iraq War, particularly from 1984, was the continuous supply of oil from the Gulf region, both for states dependent on oil supplies and the other Gulf states seeking to meet this demand. Military activities occurring off the coasts of Iran and Iraq, including the declaration of exclusion zones and attacks on both commercial and military vessels, threatened oil supplies.[130] One response was for the US and other allied navies to provide escorts to neutral shipping to ensure the safe transport of oil and other resources out of the region.[131] These escorts were permissible under the doctrine of convoy[132] and prevented the exercise of the belligerent right of visit and search.[133]

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[124] *Treaty concerning the State Frontier and Neighbourly Relations between Iran and Iraq*, signed 13 June 1975, 1017 UNTS 54 (entered into force 22 June 1976).

[125] 'Memorial Submitted by the Islamic Republic of Iran', *Oil Platforms (Iran v United States of America)* (International Court of Justice, General List No 90, 8 June 1993) vol 1, 15 [1.29] ('Iranian Memorial, *Oil Platforms*').

[126] Ibid vol 1, 15–16 [1.30]. See also *Oil Platforms (Iran v United States of America) (Judgment)* [2003] ICJ Rep 161, 174 [23].

[127] Adam Pertman, 'Schultz: US Met Iranian in Dec to Rule Out Arms Deal', *Boston Globe* (Boston, 28 January 1987) 10; Jeffrey Ulbrich, 'Iran Willing to Use Influence to Win Hostages' Release', *The Associated Press* (New York, 5 November 1986).

[128] Hirad Abtahi, 'The Islamic Republic of Iran and the ICC' (2005) 3(3) *Journal of International Criminal Justice* 635, 641. See also Hossein Karimifard, 'Iran's Foreign Policy Approaches toward International Organizations' (2018) 2(1) *Journal of World Sociopolitical Studies* 35, 44–7, outlining Iranian opposition to Western views during the Iran–Iraq War.

[129] This agreement was reached by each state eventually accepting the terms of SC Res 598, 2750th mtg, UN Doc S/RES/598 (20 July 1987): *Oil Platforms* (n 126) 174 [23]. For discussion, see Matthew J Ferretti, 'The Iran–Iraq War: United Nations Resolution of Armed Conflict' (1990) 35(1) *Villanova Law Review* 197, 225–34.

[130] 'Iranian Memorial, *Oil Platforms*' (n 125) 17–18 [1.33]–[1.35], 19–20 [1.38]–[1.40], referring to Iraq's actions. See also at 20–1 [1.42]–[1.43]. See also *Oil Platforms* (n 126) 174–5 [23].

[131] *Oil Platforms* (n 126) 175 [24].

[132] See Horace B Robertson Jr, 'Interdiction of Iraqi Maritime Commerce in the 1990–1991 Persian Gulf Conflict' (1991) 22(3) *Ocean Development and International Law* 289, 293–4.

[133] 'Iranian Memorial, *Oil Platforms*' (n 125) vol 1, 24 [1.50]–[1.51].

The presence and activities of the US in the area greatly antagonised Iran.[134] The events that were ultimately complained of by Iran to the ICJ related to incidents on 19 October 1987 and 18 April 1988, when the US attacked and destroyed three offshore oil production complexes that were owned and operated by the National Iranian Oil Company. The US undertook these actions on the grounds that the platforms were being used as launch sites for Iranian helicopters and small high-speed boats to attack US and other neutral merchant shipping, and that the boats were also being used to lay naval mines.[135] The US thus regarded the oil platforms as military targets and argued that the actions were justified in response to Iran's actions against the Kuwaiti-flagged *Sea Isle City* tanker as well as against the *USS Samuel B Roberts*.[136] The latter vessel had struck a mine, though Iran denied that it was responsible for the laying of the mine and considered Iraq to blame given Iraq's use of mines during the Iran–Iraq War.[137] Iran also denied that it had weaponry available to hit the *Sea Isle City*.[138] Instead, Iran insisted that the attacks were part of US pressure on Iran to agree to a peace deal.[139]

In presenting its claims concerning the 1987 and 1988 incidents at the ICJ, Iran argued that the US actions violated the *Treaty of Amity* and relied on the compromissory clause in this agreement to institute proceedings. Iran thus cast its legal claims as violations of three specific provisions of the *Treaty of Amity*[140] so as to align with the subject matter jurisdiction of the Court. Similar to Iran's interactions with the Court in the earlier cases discussed here, Iran sought to ensure a broad understanding of the factual context of the case and presented facts to the Court from the time of the adoption of the *Treaty of Amity* through to the incidents in the late 1980s that were challenged before the Court.[141]

This context included the US involvement in the overthrow of Prime Minister Musaddiq and installation of the Shah of Iran in 1953.[142] Shortly after the Shah's accession to power, Iran and the US concluded the *Treaty of Amity* in 1955.

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134 Iran set out a series of US actions that Iran considered to be aggressive steps that the US took against Iran: ibid vol 1, 35–41 [1.86]–[1.99].

135 Iran denied this use of the platforms: ibid vol 1, 42 [1.103].

136 'Preliminary Objection Submitted by the United States of America', *Oil Platforms (Iran v United States of America)* (International Court of Justice, General List No 90, 16 December 1993) 23–6 [1.34]–[1.40] ('US Preliminary Objections, *Oil Platforms*').

137 'Application Instituting Proceedings', *Oil Platforms (Iran v United States of America)* (International Court of Justice, General List No 90, 2 November 1992) 4 ('Iranian Application Instituting Proceedings, *Oil Platforms*'). These allegations were refuted by the United States: ibid 13–15 [1.18]–[1.21].

138 'Iranian Memorial, *Oil Platforms*' (n 125) vol 1, 42 [1.105]. But see 'US Preliminary Objections, *Oil Platforms*' (n 136) 17–18 [1.25]–[1.26], 18–19 [1.28]–[1.29].

139 'Iran Sues US over Gulf Attacks', *The New York Times* (New York, 7 November 1992) 6.

140 Namely, arts I, IV(1) and X(1): 'US Preliminary Objections, *Oil Platforms*' (n 136) 40 [3.16], citing 'Iranian Memorial, *Oil Platforms*' (n 125) vol 1, 69 [3.02], 83 [3.48], 87 [3.59], 91 [3.69].

141 See 'Iranian Memorial, *Oil Platforms*' (n 125) vol 1, pt I. Iran noted that

> the context of the attacks — the general status of US–Iranian relations established by the *Treaty of Amity*, both before and after the 1979 Islamic Revolution, and the period from 1980–88 during which Iran was subject to Iraqi aggression — is as important as the attacks themselves.

at 5 [1.01].

142 'Iranian Memorial, *Oil Platforms*' (n 125) vol 1, 7–8 [1.08], citing Kermit Roosevelt, *Countercoup: The Struggle for the Control of Iran* (McGraw-Hill, 1979).

The *Treaty of Amity* was part of a wider program of bilateral treaties for friendship, commerce and navigation that were pursued by the US to protect US interests abroad and US foreign investments.[143] The Treaty had facilitated much greater engagement of US companies in developing Iran's oil industry.[144] During the Shah's regime, the US was able to exert considerable influence over a variety of Iranian policies, including land reform, literacy programs and women's suffrage.[145] As noted previously, the US considered Iran an important ally during the time of the Shah's leadership.[146] However, this situation changed with the Iranian Revolution in 1978. Iran claimed that the US became more involved in the Iran–Iraq conflict from 1984 in providing support to Iraq and engaging in 'provocation, threats and outright aggression against Iran'.[147] Iran emphasised in its pleadings the aggressive actions of Iraq and the concomitant failure of the international community to condemn these actions or support Iran's defensive efforts.[148] Within Iran, the case was viewed as a vehicle to achieve international condemnation of US behaviour and reparations.[149] According to Iran, the US's support for Iraq extended to military, economic and political support through different policies and outlets,[150] with the express aim of supporting an Iraqi victory.[151] The US challenged the ICJ's jurisdiction, and, in its pleadings, it focused on the factual setting that existed in the three years prior to the incidents in question, emphasising that an armed conflict was ongoing at the time and alleging that Iran had 'repeatedly' attacked 'innocent merchant shipping'.[152]

Although the incidents in question occurred in 1987 and 1988, Iran did not institute proceedings at the ICJ until 1992.[153] By that time, Iran was already engaged in litigation at the Court against the US for violating the Chicago *Convention on International Civil Aviation* and the Montreal *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*.[154] Iran commenced these proceedings in relation to the *USS Vincennes* shooting down an Iran Air plane, killing 290 persons on board, on 3 July 1988.[155] Commencing the litigation was meant to underline the importance that Iran

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143 'US Preliminary Objections, *Oil Platforms*' (n 136) 39–40 [3.15].

144 'Iranian Memorial, *Oil Platforms*' (n 125) vol 1, 8–9 [1.12]–[1.13], 10 [1.16].

145 Krysta Wise, 'Islamic Revolution of 1979: The Downfall of American–Iranian Relations' (2011) 11(1) *Legacy* 1, 2. For discussion on the US's engagement in oil pricing during the Shah's regime, see Andrew Scott Cooper, 'Showdown at Doha: The Secret Oil Deal that Helped Sink the Shah of Iran' (2008) 62(4) *Middle East Journal* 567, 571–5, 582–4.

146 See above n 65.

147 'Iranian Memorial, *Oil Platforms*' (n 125) vol 1, 1–2 [4].

148 Ibid vol 1, pt 1 ch 2. See also *Oil Platforms* (n 126) 176 [26].

149 'Iran Sues US over Gulf Attacks' (n 139).

150 'Iranian Memorial, *Oil Platforms*' (n 125) vol 1, 34–5 [1.80]–[1.85]. See also *Oil Platforms* (n 126) 176 [26].

151 'Iranian Memorial, *Oil Platforms*' (n 125) vol 1, 37 [1.90], citing the then US Assistant Secretary of Defense.

152 'US Preliminary Objections, *Oil Platforms*' (n 136) 4 [1.02], 6–9 [1.05]–[1.09].

153 The damaged oil platforms remained out of operation at the time that the *Oil Platforms* case was initiated: 'Iranian Application Instituting Proceedings, *Oil Platforms*' (n 137) 3.

154 'Application Instituting Proceedings', *Aerial Incident of 3 July 1988 (Iran v United States of America)* (International Court of Justice, General List No 79, 17 May 1989) ('Iranian Application Instituting Proceedings, *Aerial Incident*').

155 Ibid 4.

attached to this incident in its relationship with the US.[156] The shooting down was subject to a fact-finding investigation through the International Civil Aviation Organization and resulted in a resolution in which the incident was 'deeply deplore[d]'.[157] The *Oil Platforms* case was commenced shortly after Iran had responded to the US preliminary objections in the *Aerial Incident of 3 July 1988* case.[158] The latter was ultimately settled by the parties in February 1996,[159] following a US payment to Iran. This settlement was reached before the Court decided on the preliminary objections of the US in *Oil Platforms*.

The pleadings in *Oil Platforms* progressed from 1992 to 2003, addressing objections to jurisdiction and US counterclaims.[160] In its judgment on the merits, the ICJ determined that the US did not discharge its burden of proof with respect to the claim that Iran had committed an armed attack on the *Sea Isle City*,[161] even when considered on a cumulative basis with other events occurring at a similar time.[162] Similarly, the Court concluded that the US had not established that an armed attack occurred in relation to the *USS Samuel B Roberts* so as to justify the US's second attack.[163] Even if armed attacks had occurred, the Court concluded that the US actions did not fall within the lawful exercise of self-defence.[164] The *Oil Platforms* decision thus allowed the Court to elaborate further on the international law of armed conflict.[165]

The ICJ further examined closely whether there was commerce between the US and Iran that had been prevented in violation of the *Treaty of Amity* because of the US attacks on the oil platforms. The Court found that there was no such commerce, as there was no oil being produced from those platforms that was going directly to the US.[166] Similarly, in addressing the US counterclaim,

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[156] Edward Cody, 'Iran Suing US in World Court: Compensation Sought for Vincennes' Shooting Down of Airliner', *The Washington Post* (Washington, 20 May 1989). The action at the ICJ was also supposed to discourage individual lawsuits in the US: see Eric Hall, 'Lawyer Says Suit Filed for Victims of Shot Down Iran Airbus', *Reuters* (London, 2 July 1989).

[157] 'Iranian Application Instituting Proceedings, *Aerial Incident*' (n 154) attachment ('Decision Taken by ICAO Council on IR 655 Tragedy') 12.

[158] It was also started six years after the *Military and Paramilitary Activities in and against Nicaragua* judgment wherein the Court had found that the US was in violation of a bilateral treaty, the *Treaty of Friendship, Commerce and Navigation*, in similar terms to the *Treaty of Amity*: *Military and Paramilitary Activities in and against Nicaragua (Judgment)* [1986] ICJ Rep 14 147 [292(7)] ('*Armed Activities in and against Nicaragua*'). The interpretations of that treaty were clearly at play in the *Oil Platforms* case: see *Oil Platforms* (n 126) 179–80 [34]–[35], 180 [37], 181–2 [40], 183 [43].

[159] 'US to Compensate Iranians for Jet Shootdown', *Sun Sentinel* (Fort Lauderdale, 23 February 1996).

[160] The length of the proceedings is notable in its own right. Andrew A Jacovides has rightly observed that '[t]hird-party settlement can take a long time and be quite costly, and this gives an advantage to large and wealthy states, which can afford the cost of being involved in prolonged and costly proceedings more easily': Andrew A Jacovides, 'International Tribunals: Do They Really Work for Small States?' (2001) 34(1) *New York University Journal of International Law and Politics* 253, 260.

[161] *Oil Platforms* (n 126) 190 [61].

[162] Ibid 191–2 [64].

[163] Ibid 195–6 [72].

[164] Ibid 198 [76].

[165] See Armin von Bogdandy and Ingo Venzke, 'On the Functions of International Courts: An Appraisal in Light of Their Burgeoning Public Authority' (2013) 26(1) *Leiden Journal of International Law* 49, 55, 65.

[166] *Oil Platforms* (n 126) 207 [98].

the Court considered whether the disruptions to commerce and navigation related to movement between Iran and the US and concluded that there were no impediments between Iran and the US.[167] The upshot was that neither Iran nor the US prevailed in their claims against the other. The ambivalent result meant that neither state received any financial compensation in respect of the incidents in question.

D *The Certain Iranian Assets Proceedings*

In the years immediately following the *Oil Platforms* case, Iran considered that its economic and sovereign interests were prejudiced by a series of US legislative and executive actions that resulted from Iran's classification by the US as a state sponsoring terrorism.[168] A consequence of this designation was that claims and enforcement proceedings were pursued in US courts against Iran and Iranian entities. Iran had protested the US actions as violations of international law from at least 1998.[169] At the time that Iran instituted proceedings at the ICJ in 2016, US courts had awarded a total of USD56 billion in damages against Iran,[170] including for cases concerning the 11 September 2001 attacks on the US and the 1983 killing of US marines in Lebanon.[171] In 2016, the US Supreme Court upheld the constitutionality of an enactment that abrogated the immunity of Iran's central bank, Bank Markazi,[172] allowing payment to judgment creditors.[173]

Shortly after the judgment of the US Supreme Court was issued, Iran instituted proceedings against the US at the ICJ, arguing that these measures were in violation of various provisions of the *Treaty of Amity*.[174] Iran argued, inter alia, that Bank Markazi and other Iranian state-owned entities were entitled to sovereign immunity and that US legislation and judicial decisions allowing for the exercise of jurisdiction and enforcement of judgments against these Iranian

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[167] Ibid 217–18 [123].

[168] *Certain Iranian Assets (Iran v United States of America) (Preliminary Objections)* [2019] ICJ Rep 7, 20–1 [21]–[27] ('*Certain Iranian Assets (Preliminary Objections)*').

[169] 'Attachments and Annexes to the Memorial of the Islamic Republic of Iran', *Certain Iranian Assets (Iran v United States of America)* (International Court of Justice, General List No 164, 1 February 2017) vol IV, annex 89 ('Message from the Ministry of Foreign Affairs of IR Iran to the United States of America, Dated 14 July 1998') 513–14. Subsequent protests were made in 2008, noting that the US's actions were violations of one of the two general principles, General Principle A, under which the Iran–US Claims Tribunal was established: at vol IV, annex 90 ('Letter from the Agent of IR Iran to the Iran–US Claims Tribunal to the Agent of the United States to the Iran–US Claims Tribunal, Dated 12 February 2008') 519–20.

[170] The economic harm was said to be USD60.4 billion in Iran's Memorial: 'Memorial of the Islamic Republic of Iran', *Certain Iranian Assets (Iran v United States of America)* (International Court of Justice, General List No 164, 1 February 2017) 1–2 [1.3].

[171] 'Application Instituting Proceedings', *Certain Iranian Assets (Iran v United States of America)* (International Court of Justice, General List No 164, 14 June 2016) 6–8 [7]–[8] ('Iranian Application Instituting Proceedings, *Certain Iranian Assets*').

[172] *Bank Markazi v Peterson*, 136 S Ct 1310 (2016).

[173] 'Iranian Application Instituting Proceedings, *Certain Iranian Assets*' (n 171) 8 [8].

[174] Iran argued that the US was in violation of arts III–V, VII and X of the *Treaty of Amity*: ibid 34 [33(b)].

entities were unlawful.[175] Iran sought reparations from the US, including cessation, restitution and compensation.[176]

The US objected to the admissibility of Iran's claims and challenged the ICJ's jurisdiction. The US especially sought to bring to light a history of Iran's support of and engagement in terrorist activity as a means to establish that Iran came to the Court with 'unclean hands' and that its institution of proceedings was an abuse of right.[177] The US characterised the Iranian case in the following terms:

> Iran seeks to focus the Court's attention on just one chapter of the deeply troubled bilateral history between Iran and the United States, and within that chapter on the conduct of just one Party, the United States. Though Iran cannot rationally expect the Court to be unaware of its litany of international transgressions, which have earned it the condemnation of the international community, Iran asks the Court to accord it a remedy for a set of US measures taken in response to Iran's decades of offenses. By bringing these claims, Iran does not seek resolution of a narrow legal dispute concerning the provisions of a commercial treaty. Rather, it attempts to embroil the Court in a broader strategic dispute.[178]

The US's preliminary objections to jurisdiction and admissibility detailed Iran's purported engagement in supporting terrorism, as well as outlining Iran's violations of diverse international laws pertaining to nuclear non-proliferation, ballistic missiles and arms trafficking.[179] While Iran acknowledged its complex history with the US, Iran emphasised that these dimensions should not prevent settling this specific dispute through judicial means.[180] In taking this approach, Iran appeared to be echoing the approach that the US had used in the *Tehran Hostages* case.

In its judgment on preliminary objections, the ICJ maintained the position that it had articulated in the *Tehran Hostages* case that, although cases submitted to it might have broader dimensions, the Court would focus on the specific legal questions before it.[181] The Court found that it had jurisdiction,[182] except that principles of sovereign immunity fell outside the Court's jurisdiction under the *Treaty of Amity*.[183] Despite the broader strategic dispute presented to the Court

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175 Ibid 28 [32(b)], 34 [33(d)].

176 Ibid 34 [33(c)], 34 [33(f)].

177 During oral arguments, the US referred to 'abuse of process' and that such an abuse of process occurred when coming before the Court with 'unclean hands': *Certain Iranian Assets (Preliminary Objections)* (n 168) 40 [100].

178 'Preliminary Objections Submitted by the United States of America', *Certain Iranian Assets (Iran v United States of America)* (International Court of Justice, General List No 164, 1 May 2017) 2 [1.4] ('US Preliminary Objections, *Certain Iranian Assets*').

179 See ibid pt 1 ch 3.

180 *Certain Iranian Assets (Preliminary Objections)* (n 168) 22 [35].

181 Ibid 23 [36].

182 Ibid 40 [98]–[99].

183 Ibid 34 [80]. This avoided complex legal issues in the process: see, eg, Janig and Mansour Fallah (n 15); Franchini (n 15). The Court's decision to not consider the customary international law of sovereign immunity in this case has been contrasted with the Court's willingness to look at the customary law of self-defence in the *Oil Platforms* case: Katayoun Hosseinnejad and Pouria Askary, 'Interpretation of Implication: Some Observations on the Recent ICJ Decision in the Case of Certain Iranian Assets', *Opinio Juris* (Blog Post, 1 March 2019) <http://opiniojuris.org/2019/03/01/interpretation-of-implication-some-observations-on-the-recent-icj-decision-in-the-case-of-certain-iranian-assets/>, archived at <https://perma.cc/KGS5-GLJP>.

by the US, the Court did not consider Iran's application to be an abuse of process that rendered the dispute inadmissible.[184] Instead, the Court looked quite narrowly at the existence of a head of jurisdiction and the issuance of claims arising under that head of jurisdiction, observing that there were no exceptional circumstances in that setting to constitute an abuse of process.[185]

An Iranian representative was reported as describing the decision as a success, although he noted that he had expected all of the American objections to be rejected.[186] At the time of writing, the pleadings on the merits of this case are continuing. The financial stakes involved in this case are again high for Iran, and this case was potentially an attempt to trigger settlement discussions; a strategy that might have been more likely to succeed if the ICJ had determined that the immunity issue was within jurisdiction.

E *The Alleged Violations of the Treaty of Amity Proceedings*

While the *Certain Iranian Assets* case was in the preliminary objections phase, Iran instituted proceedings against the US in 2018 claiming further violations of the *Treaty of Amity*. In this instance, Iran was objecting to the re-imposition of sanctions by the US in two phases in the wake of US President Donald Trump's January 2018 decision that the US should withdraw from the *Joint Comprehensive Plan of Action* ('*JCPOA*'). The *JCPOA* was a multilateral commitment concluded in 2015 between Iran, the five permanent members of the UN Security Council, Germany and the European Union. The Agreement involved Iran committing to an exclusively peaceful nuclear program in return for all sanctions against Iran relating to its nuclear program being lifted.[187] The *JCPOA* was an important step for Iran, as the easing of sanctions was critical for its economy, even if at the expense of its nuclear program.[188] The conclusion of the *JCPOA* was a significant achievement of the moderate Iranian President Hassan Rouhani and was supported by Iran's Supreme Leader, Ayatollah Ali Khamenei.[189] Iran maintained that it was complying with

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184 *Certain Iranian Assets (Preliminary Objections)* (n 168) 42–3 [113]–[114].

185 Ibid 43 [114]. The Court also dealt briefly with the clean hands objection, suggesting that it might be raised as a defence on the merits but that it was seemingly inapplicable because the US was not claiming that Iran had violated the *Treaty of Amity* (but rather that it had violated other rules of international law): at 44 [122]–[123].

186 Mike Corder, 'UN Court Has Jurisdiction to Hear Part of Iran–US Dispute', *The Spokesman-Review* (online, 13 February 2019) <https://www.spokesman.com/stories/2019/feb/13/un-court-has-jurisdiction-to-hear-part-of-iran-us-/>, archived at <https://perma.cc/FF49-6LHN>.

187 *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v United States of America) (Provisional Measures)* [2018] ICJ Rep 623, 628–9 [17] ('*Alleged Violations (Provisional Measures)*').

188 Iran has contended that the US's announcement, that it was withdrawing from the JCPOA, was 'producing irreparable damage to the whole Iranian economy': ibid 647 [83].

189 Nomia Iqbal, 'Iran Nuclear Deal: Why Is It So Important?', *BBC News* (online, 14 July 2015) <http://www.bbc.co.uk/newsbeat/article/33520341/iran-nuclear-deal-why-is-it-so-important>, archived at <https://perma.cc/49MB-3Z86>.

the *JCPOA*, which was confirmed through monitoring and verification by the International Atomic Energy Agency.[190]

In deciding to bring a case to the ICJ, Iran was using one avenue to respond to the significant economic harm to which it was exposed because of the US's actions. The full suite of US sanctions against Iran were intended to be 'the strongest sanctions in history when … complete'.[191] The US Secretary of State further indicated that 'these economic sanctions are just a part of the US Government's total effort to change the behavior of the Ayatollah Khamenei, Qasem Soleimani, and the Iranian regime'.[192] Iran has consistently viewed the unilateral sanctions imposed by the US to be unlawful under international law but considered that the 2018 actions necessitated Iran's challenge at the Court.[193]

The first phase of the US sanctions began on 7 August 2018 and, in its application instituting proceedings on 16 July 2018, Iran requested the indication of provisional measures. Given the anticipated economic harm from the re-imposition of sanctions, Iran sought a suspension on the implementation and enforcement of the sanctions pending the resolution of the case. Iran was able to establish to the ICJ's satisfaction that it plausibly had some rights to protect for an indication of provisional measures,[194] albeit limited to rights for the importation and purchase of goods and products to meet humanitarian needs.[195] These rights were linked to the *Treaty of Amity* obligations to ensure the freedom of trade and commerce.[196] The Court indicated that the US was to remove impediments to free exportation into Iran of medicines and medical devices; foodstuffs and agricultural commodities; and parts, equipment and services relevant for the safety of civil aviation.[197]

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[190] See 'Application Instituting Proceedings', *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v United States of America)* (International Court of Justice, General List No 175, 16 July 2018) 10 [16]–[17] ('Iranian Application Instituting Proceedings, *Alleged Violations*'). See also 'Memorial of the Islamic Republic of Iran', *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v United States of America)* (International Court of Justice, General List No 175, 24 May 2019) 19 [2.5], 20 [2.9] ('Iranian Memorial, *Alleged Violations*').

[191] 'Iranian Application Instituting Proceedings, *Alleged Violations*' (n 190) 12 [19], citing Michael R Pompeo, 'After the Deal: A New Iran Strategy' (Speech, The Heritage Foundation, 21 May 2018) <https://2017-2021.state.gov/after-the-deal-a-new-iran-strategy/index.html>, archived at <https://perma.cc/N33J-TRG5>. See also 'Iranian Memorial, *Alleged Violations*' (n 190) 2 [1.5].

[192] 'Iranian Memorial, *Alleged Violations*' (n 190) 3 [1.8], citing 'Annexes to the Memorial of the Islamic Republic of Iran', *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v United States of America)* (International Court of Justice, General List No 175, 24 May 2019) vol II, annex 42 ('US Department of State, "Briefing on Iran Sanctions", Special Briefing, 2 November 2018') 261.

[193] 'Iranian Memorial, *Alleged Violations*' (n 190) 5 [1.13]. The US questioned Iran's actions in challenging the imposition of sanctions that had previously been in place prior to the JCPOA and seemingly would have been viewed as violations of the *Treaty of Amity* at that time: 'Preliminary Objections Submitted by the United States of America', *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v United States of America)* (International Court of Justice, General List No 175, 23 August 2019) 3–4 [1.4] ('US Preliminary Objections, *Alleged Violations*').

[194] *Alleged Violations (Provisional Measures)* (n 187) 638–9 [54], 643 [69].

[195] Ibid 643–4 [70].

[196] Ibid 645 [75].

[197] Ibid 651 [98].

When the ICJ granted provisional measures, the US announced its withdrawal from the *Treaty of Amity*.[198] Under the terms of that treaty, it can be terminated following one year's written notice from one of the parties.[199] The notice of termination does not prevent the exercise of jurisdiction over cases commenced while the Treaty was in force.[200] The remaining US sanctions took effect on 5 November 2018.[201] Consistent with the US's statement at the time that the Court indicated provisional measures, the US underlined that various humanitarian-related goods were unaffected, including agricultural commodities, food and medicine.[202] The economic measures against Iran instead targeted Iran's energy, shipping, automotive and banking sectors, along with its trade in gold and the Iranian rial.[203] However, the impediments that the Court ordered to be removed have since been maintained or exacerbated, indicating that the US is noncompliant.[204]

The US presented the ICJ indication of provisional measures as a victory at the time. US Secretary of State Mike Pompeo accused Iran of 'abusing the ICJ for political and propaganda purposes' and commented that the Court had 'rejected all of Iran's baseless requests'.[205] Iran claimed that it was engaged in an 'economic war' with the US,[206] and Iran's Foreign Minister described the result as '"another failure" for the United States and a "victory for the rule of law"'.[207] At time of writing, the parties had presented written and oral pleadings on the US preliminary objections to jurisdiction and the admissibility of the dispute, and a decision of the Court is pending.

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198 Michael R Pompeo, 'Remarks to the Media' (Remarks to the Press, 3 October 2018) <https://2017-2021.state.gov/remarks-to-the-media-3/index.html>, archived at <https://perma.cc/P8A3-Q2G5>.

199 *Treaty of Amity* (n 11) arts XXIII(2)–(3).

200 It has been questioned whether the withdrawal will impact on any reparations that the Court might eventually order: Jean Galbraith (ed), 'Iran Initiates Suit against the United States in the International Court of Justice, while Sanctions Take Effect' (2019) 113(1) *American Journal of International Law* 173, 178–9 ('Iran Initiates Suit against US').

201 Ibid 173.

202 Ibid 177–8, 181. However, the Court noted that the practical reality was different to the official US position and that this reality had influenced the need for the provisional measures: see *Alleged Violations (Provisional Measures)* (n 187) 649 [88]–[89].

203 Galbraith, 'Iran Initiates Suit against US' (n 200) 180–1.

204 'Iranian Memorial, *Alleged Violations*' (n 190) 10 [1.27]. See Joseph Klingler, Beau Barnes and Tara Sepehri Far, 'Is the US in Breach of the ICJ's Provisional Measures Order in Alleged Violations of the 1955 Treaty of Amity?' (2020) 24(12) *ASIL Insights*. The US considered that it was compliant: see 'US Preliminary Objections, *Alleged Violations*' (n 193) 5 [1.8].

205 Pompeo, 'Remarks to the Media' (n 198).

206 Galbraith, 'Iran Initiates Suit against US' (n 200) 182. The Iranian Foreign Minister has referred to the US's actions as 'economic terrorism': Jason Lemon, 'Iran's Foreign Minister Blasts Trump's Sanctions as "Economic Terrorism", Accusing US of Blocking Humanitarian Aid', *Newsweek* (online, 2 April 2019) <https://www.newsweek.com/trump-iran-sanctions-terrorism-economic-humanitarian-aid-1383262>, archived at <https://perma.cc/KP4K-3AY6>.

207 Erin Cunningham and Carol Morello, 'United Nations' Court Rules US Must Allow Humanitarian Trade with Iran', *The Washington Post* (online, 3 October 2018) <https://www.washingtonpost.com/world/united-nations-court-rules-us-must-allow-humanitarian-trade-with-iran/2018/10/03/a745e9bb-12d5-4281-8fcd-929badadaef0_story.html>, archived at <https://perma.cc/B4JP-WF9J>.

III SPECIFIC LESSONS FROM IRAN'S ENCOUNTERS WITH THE ICJ

Iran's experiences of adjudication have exposed Iran to the potential and the limits of international adjudication for pursuing national interests. This Part sets out observations from each of the cases discussed above and how the experience of the litigation impacted (or not) on Iran's domestic agenda or on its interstate relations.

As noted, Iran's first experience at the ICJ was as a respondent in the *Anglo–Iranian Oil Co* case, and it opted to contest jurisdiction via a letter and not participate in the Court proceedings. In its communication to the Court, Iran had 'earnestly hope[d] that the Court [would] not spare a moment to declare the case beyond its jurisdiction, as otherwise it would bring disappointment to the weaker nations as far as international justice and good-will are concerned'.[208] The Court's decision on jurisdiction did not legitimate Iran's policies, but nor could the Court firmly deny the authority of Iran to pursue its national policies in relation to the AIOC. The ICJ proceedings in this instance appear to have been a distraction for Iran in pursuing its national policies to assert control over its natural resources and to garner the financial benefits that would flow from this control. Iran did not perceive that the Court had any role to play, as it sought greater control over its oil resources from foreign powers.

Potentially, an international court has the opportunity to send a message to those with domestic authority within a state who may have taken decisions or who have responsibility for the implementation of international law.[209] The UK's pursuit of the *Anglo–Iranian Oil Co* case at the ICJ ostensibly sought to demonstrate to a lesser power the authority of international law in curtailing state sovereignty.[210] Thus, a decision on the merits against Iran might have been expected to cause domestic authorities within Iran to take greater account of international standards.[211] However, even if a decision on the merits had been reached in Britain's favour, Iran's disregard of the provisional measures order makes this outcome unlikely.

Iran achieved a legal victory in the *Anglo–Iranian Oil Co* case in the ICJ's determination that it lacked jurisdiction to resolve the UK's claims on the merits. As such, Iran was able to fend off the engagement of the ICJ and ensure that there was no adverse international review of its actions from this institution. However, the economic and political interests of the UK (and the US) were too great for the legal outcome in the case to resolve their differences.[212] As noted in the earlier discussion,[213] the UK did not consider that the Court had vindicated Iran's position in nationalising the AIOC. The ICJ did not settle the dispute, but its decision prompted the UK to exploit political avenues in line with its own national priorities.

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208 'Iranian Communication, *Anglo–Iranian Oil Co*' (n 18) 678.

209 See Dinah Shelton, 'Form, Function, and the Powers of International Courts' (2009) 9(2) *Chicago Journal of International Law* 537, 564–5; von Bogdandy and Venzke (n 165) 57–8.

210 Arguably, the UK had deployed this tactic when it pursued a case against Albania for damage caused to British warships transiting the Corfu Channel: *Corfu Channel (United Kingdom v Albania) (Merits)* [1949] ICJ Rep 4.

211 A function of international courts identified by Armin von Bogdandy and Ingo Venzke: see von Bogdandy and Venzke (n 165) 58.

212 Shafiee (n 33) 629; Pahuja and Storr (n 17) 54–5.

213 See above nn 61–2 and accompanying text.

When the US instituted proceedings against Iran in *Tehran Hostages*, Iran again opted to minimise its participation before the ICJ. Similarly to its approach in the *Anglo–Iranian Oil Co* case, Iran's national priorities during the Iranian Revolution were critical, and it would not brook interference from the Court in this regard. While Iran signalled concerns about the legality of the US's behaviour, Iran's failure to elaborate on these claims prevented the Court from assessing these claims.[214] Iran seemingly had no interest in having traditional rules of international law affirmed in the midst of its revolution. The Court did, though, insist on the importance of the international law principles at stake in underlining the importance of diplomatic and consular immunities.[215] The Court's role in upholding diplomatic law aligns with Armin von Bogdandy and Ingo Venzke's assessment of international courts' functions in 'support[ing] normative expectations, particularly in case of their violation, and thereby mak[ing] a crucial contribution to orderly social interactions'.[216]

While the US was supportive of this broader function of affirming normative expectations in the operation of international law, both parties were fully cognisant of the complexity of the issues at stake and the diverse means being deployed to resolve the hostage situation, as well as the multifaceted financial claims. A core emphasis for both parties was on asserting their respective national priorities. However, also relevant was the relationship of the parties, which was deeply intertwined across a number of issues and interests, providing greater bargaining opportunities to resolve the broader crisis. The existence of these varied claims enabled a series of trade-offs in the mediation effort that ultimately settled the dispute.[217]

The timing of the *Oil Platforms* case was notable because it followed Nicaragua's victory in the *Military and Paramilitary Activities in and against Nicaragua* case ('*Armed Activities in and against Nicaragua*').[218] The latter case had demonstrated how a smaller power could take on the US at the ICJ.[219] The Court's decision in favour of Nicaragua in *Armed Activities in and against Nicaragua* signalled a change from the earlier jurisprudence, which was perceived as alienating developing states in relation to the Court.[220] Instead, the ICJ could now be seen as a forum where states could meet on more equal terms than may have been possible before the UN Security Council for questions relating to peace and security.

In addition, after two experiences as respondent, Iran was clearly exposed to how the ICJ could provide a forum for airing grievances and seeking affirmation

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214 *Tehran Hostages* (n 63) 20 [37]–[38].

215 Ibid 19 [36].

216 von Bogdandy and Venzke (n 165) 54.

217 See above n 85 and accompanying text.

218 *Armed Activities in and against Nicaragua* (n 158).

219 See István Lakatos, 'The Potential Role of Small States and Their "Niche Diplomacy" at the UN and in the Field of Human Rights, with Special Attention to Montenegro' [2017] (1) *Pécs Journal of International and European Law* 58, 64. See also Eric A Posner, 'The Decline of the International Court of Justice' (Working Paper No 233, John M Olin Program in Law and Economics, University of Chicago, December 2004) 23; Cesare PR Romano, 'International Justice and Developing Countries (Continued): A Qualitative Analysis' (2002) 1(3) *Law and Practice of International Courts and Tribunals* 539, 588–9.

220 Notably, the decision of *South West Africa (Ethiopia v South Africa) (Second Phase)* [1966] ICJ Rep 6: see Posner (n 219) 22.

of a position under international law. Coupled with the earlier decision in *Armed Activities in and against Nicaragua*, the findings of the Court on the law of armed conflict in *Oil Platforms* highlighted a role for the ICJ in advancing understanding of this body of law and holding states to account for violations.[221] The *Oil Platforms* decision affirmed normative expectations in this area of international law by contributing to the Court's lawmaking function in deciding on the application of various dimensions of the law of armed conflict.[222] Yet the Court's decision on the interpretation and application of the law of armed conflict meant that neither Iran nor the US's legal positions were fully vindicated. If Iran's interest was truly in advancing international law, its ambition was not fully achieved.

A benefit for Iran from its encounter with the ICJ in *Oil Platforms* was that it had the opportunity to air its long-held grievances against US actions in and against Iran. By fully engaging in all stages of pleadings, Iran had the opportunity to set out its view of the historic record.[223] With the emergence of the US as the sole superpower in the 1990s, Iran's effort to expose US conduct during the Iran–Iraq War as violations of international law may have tarnished the international reputation of the US.[224] Although Iran had sought to expose US misconduct in *Tehran Hostages*, it had not taken the opportunity to present its position fully through its written and oral pleadings. Iran perhaps better appreciated, at this point at least, a rhetorical benefit in presenting its side of the story within an international forum. This benefit was likely diminished by the result before the Court.[225]

It must also be acknowledged that the financial stakes for Iran were considerable in *Oil Platforms* given the ongoing inoperability of three of its oil platforms, and hence they were a core motivation for pursuing the legal proceedings. The ambivalent outcome of the case resulted in no direct financial gain for Iran, although the rejection of the US counterclaim meant that no financial liability was incurred either. It remains speculative as to whether the engagement in this case facilitated the reaching of a settlement of the *Aerial Incident of 3 July 1988* case and a compensation payment to Iran. Being able to link the cases and their respective outcomes would demonstrate how the parties are engaged in dialogue across different matters and how the judicial proceedings were part of this wider engagement.

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[221] von Bogdandy and Venzke (n 165) 54–5, discussing the ICJ's role in *Armed Activities in and against Nicaragua*.

[222] The finding of the Court has been subject to considerable criticism, however: see, eg, Garwood-Gowers (n 15); James A Green, 'The Oil Platforms Case: An Error in Judgment?' (2004) 9(3) *Journal of Conflict and Security Law* 357; William H Taft IV, 'Self-Defense and the *Oil Platforms* Decision' (2004) 29(2) *Yale Journal of International Law* 295; Dominic Raab, '"Armed Attack" after the *Oil Platforms* Case' (2004) 17(4) *Leiden Journal of International Law* 719.

[223] Perhaps similar to Mauritius' ambitions: see Guilfoyle, 'The Chagos Archipelago before International Tribunals' (n 5) 761–7.

[224] The practical significance of international reputation varies. See the discussion in Andrew T Guzman, *How International Law Works: A Rational Choice Theory* (Oxford University Press, 2008) ch 3.

[225] Harvey Rishikof has criticised the result as reflecting the US's interests to the exclusion of other international voices: Harvey Rishikof, 'When Naked Came the Doctrine of "Self-Defense": What Is the Proper Role of the International Court of Justice in Use of Force Cases?' (2004) 29(2) *Yale Journal of International Law* 331, 341.

The two most recent cases that Iran has instituted against the US and that remain pending at the ICJ could also be assessed through a lens that reflects the context of the complex relationships between both states. As noted above, the US acknowledged that the history between the two countries is 'deeply troubled'.[226] While it is evident that each state has national priorities that it is pursuing in foreign relations and that power, politics and security concerns shape their interactions, the addition of international litigation provides not only extra complexity but also further opportunities for peaceful interactions and possible contribution to the resolution of (aspects of their) disputes.

A pre-eminent concern with national interest over the relevance of international law in modulating state behaviour can partly explain the US's termination of the *Treaty of Amity*. However, the ongoing engagement in legal proceedings between Iran and the US could reflect that they each perceive some value in this process within the overall bilateral dynamics of the enduring conflict between them. That value would be derived from the utility of the ICJ in providing a public record of each state's policies and actions. The proceedings could seemingly serve as an additional bargaining chip across the larger bilateral relationship. If the legal proceedings had no relevance, then why engage at all?[227]

IV Broader Lessons from Iran's Encounters with the ICJ

Beyond the cases addressed in this study, it is also notable that Iran considered resort to the ICJ in 1987 as an option for disputes that had emerged from the Iran–US Claims Tribunal.[228] Iran also reportedly considered action at the ICJ over allegations in 1996 that the US Congress had authorised funding for covert action against Iran's ruling regime.[229] Iran did, though, turn down a request from the United Arab Emirates to refer their dispute as to sovereignty over the strategically important Gulf island of Abu Musa to the ICJ in 1992.[230] Unsurprisingly, recourse to an international court was more appealing to uphold complaints against another state rather than to defend a position challenged by another state.

The development and work of the Iran–US Claims Tribunal would have likely influenced Iran's perceptions as to the utility of international litigation as well. Whereas the cases between Iran and the US at the ICJ have largely not produced meaningful results for either party in response to the specific legal claims

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226 'US Preliminary Objections, *Certain Iranian Assets*' (n 178) 2 [1.4].

227 It can be noted that the US is participating in the cases submitted by Iran, whereas it opted not to appear in proceedings instituted by Palestine under the *Vienna Convention on Diplomatic Relations* (n 86): Jean Galbraith (ed), 'Palestine Brings a Case against the United States in the International Court of Justice at a Fraught Time for US–Palestinian Relations' 113(1) *American Journal of International Law* 143, 146. The US has also recently withdrawn its acceptance of the Court's jurisdiction under this treaty: at 143.

228 'Iran Says It Would Go to World Court over Assets', *The Associated Press* (New York, 4 January 1987).

229 'Is Iran the Godfather?' (1996) 340(7979) *The Economist* 33; Michael Evans and Michael Theodoulou, 'Tehran to Accuse US of Sabotage at World Court', *The Times* (London, 9 August 1996) 11.

230 Peter Ford, 'Iran's Aggressive Stance in the Gulf Sharpens Struggle for Dominance: UAE Officials Say Tehran Is Building Missile Sites on Strategic Isle', *The Christian Science Monitor* (Boston, 22 October 1992).

presented, the Iran–US Claims Tribunal has finalised over 3,900 cases[231] and awarded over USD2.5 billion in damages to US entities[232] and about USD1 billion to Iran.[233] The successful operation of the Iran–US Claims Tribunal may be partly attributed to the fact that its operations are largely cloistered away from the ongoing tensions that persist and occasionally escalate in the relationship between Iran and the US.

In the context of Iran's encounters with the ICJ over the last 70 years, we can make five overarching observations. First, the cases at the ICJ have dealt with matters of high political interest: Iran's oil industry, the Iranian Revolution, the Iran–Iraq War, and concerns about Iran's nuclear program and support of terrorist activity. Since 1992, with the institution of the *Oil Platforms* case, Iran has turned to the ICJ as a means to thwart or react to the US's pursuit of its own national interests and policies against Iran. In addition, there were strong financial imperatives involved in each instance. These financial interests were closely tied to core national interests being pursued at the time of each case. Given these critical interests at stake, Karen J Alter correctly observes that 'it is hard to imagine any international legal body making much of a difference for this particular relationship'.[234] Protecting national interests were key concerns in each of Iran's cases at the ICJ. However, there remain other dimensions to this complex story to consider.

Second, and reflecting the multifaceted interests at stake, the cases were one among many avenues of dispute settlement being deployed at the time. The significant historic, political and economic events that lie behind each of Iran's engagements at the ICJ are notable. In this frame, the litigation may have served as an additional pressure point in a broader international strategy. When Iran was initially respondent in the *Anglo–Iranian Oil Co* case and the *Tehran Hostages* case, ICJ litigation was one of many avenues of dispute settlement being pursued against it, reinforcing the overall defensive posture Iran took, with ICJ engagement perceived as an affront to Iranian sovereignty. These actions at the ICJ were seemingly a minor hindrance, as Iran focused on pursuing its national policies and dealing with an array of external stakeholders. For Iran, the Court did not necessarily offer any greater benefit for resolving differences than the other mechanisms available at the time. Any national encounter with the Court must therefore be understood as one dimension of a much broader suite of actions at play during a dispute and throughout its resolution. A court judgment may not be enough in and of itself to settle a dispute.

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231 *Iran–United States Claims Tribunal* (Website) <http://www.iusct.net/>, archived at <https://perma.cc/57EV-NBQ8>.

232 'Iran–US Claims Tribunal', *US Department of State* (Web Page) <https://www.state.gov/iran-u-s-claims-tribunal>, archived at <https://perma.cc/76ZZ-QFMM>.

233 Damien Charlotin, 'A Data Analysis of the Iran–US Claims Tribunal's Jurisprudence: Lessons for International Dispute-Settlement Today' (2019) 10(3) *Journal of International Dispute Settlement* 443, 448.

234 Karen J Alter, *The New Terrain of International Law: Courts, Politics, Rights* (Princeton University Press, 2014) 193.

Third, we can speculate that Iran learned about the value and relevance of the ICJ through its different encounters and has brought this experience to bear in its later engagements with the ICJ.[235] Since its first encounters at the Court, Iran has arguably become a more sophisticated actor in international legal proceedings, especially when it comes to international messaging to other states and international institutions. That maturity would arguably receive a greater challenge if Iran was to appear again as a respondent, beyond dealing with counterclaims. If Iran has truly learned from its experiences before the Court, it could be expected that Iran would fully engage as a respondent in future cases rather than returning to a policy of non-participation.[236] As applicant, to date, Iran has sought to shine the spotlight on US actions, possibly as a means of gaining greater international support for its position and also of turning to an international forum that may be perceived as less susceptible to US influence. Unlike the initial communications that Iran sent to the ICJ, Iran now fully participates in all stages of the Court's proceedings and seemingly more greatly appreciates the ideological role at play for international law in its engagements with both the Court and other states.[237]

Fourth, the lawmaking function of the ICJ has been important in each of the cases involving Iran, but the legal principles at stake have not been the driving concern for Iran.[238] Moreover, the compliance pull that might be expected from resort to an international court does not appear apt when assessing Iran's experience before the Court. Instead, while each of the cases might have contributed to the corpus of international law, including international dispute settlement, these encounters with the ICJ reflect the use (or misuse) of the international judicial institution to further national strategies and priorities. Both Iran and the US have alleged that the Court is being misused in the pursuit of national strategies under a guise of legal claims. This strategy was evident in the Court's criticism of the US mission to free the hostages while the *Tehran Hostages* case was pending[239] and in the US's condemnation of the recent cases that Iran has submitted under the *Treaty of Amity* to deal with issues that the US argues are palpably beyond the scope of that agreement.[240] Iran's initial experiences at the Court sought to refute international laws that were created by

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[235] Cesare PR Romano has referred to states as undergoing '[l]earning-by-doing processes', hence making them more willing to turn to international litigation: Romano (n 219) 552.

[236] With the termination of the *Treaty of Amity*, the availability of the ICJ's jurisdiction to resolve disputes concerning Iran is now far more limited.

[237] For discussion on the ideology of international law, see Douglas Guilfoyle, 'The Rule of Law and Maritime Security: Understanding Lawfare in the South China Sea' (2019) 95(5) *International Affairs* 999, 1001–2.

[238] Sometimes the legal principles at issue may be a motivation for litigation. In these instances, the use of litigation may involve looking in detail at the legal rights and duties at issue, considering what change is initiated in the longer term because of the case and/or creating synergy between the litigation and other agents for change. See Helen Duffy, 'Strategic Human Rights Litigation: "Bursting the Bubble on the Champagne Moment"' (Lecture, Leiden University, 13 March 2017) <https://scholarlypublications.universiteitleiden.nl/handle/1887/59585>, archived at <https://perma.cc/4PZC-CDVS>, reflecting on these points in the context of human rights litigation.

[239] See *Tehran Hostages* (n 63) 17–18 [32], 43–4 [93]–[94]. See also at 55–6 [8] (Judge Morozov). For a discussion on the legality of this mission, see Jeffery (n 73) 722–8.

[240] See Pompeo, 'Remarks to the Media' (n 198).

and protected more powerful states.[241] More recently, Iran has sought to remind the Court of its role in protecting the international legal system.[242] During the oral arguments in *Alleged Violations of the Treaty of Amity*, the agent for Iran noted that 'the Court has a new and crucial opportunity to stand alongside international law and the international community against unilateralism and the continuous disregard of the rule of law by the US Administration'.[243] Thus Iran's later cases were not about challenging existing legal principles per se but, as next explored, endeavoured to expose the illegitimacy of state conduct when measured against those principles.[244]

Fifth, the law enforcement function of the ICJ has been stretched so that the Court also provides a forum to expose or question the legitimacy of particular courses of action that are pursued by the states in dispute. As the Court has noted, it 'has never shied away from a case brought before it merely because it had political implications'.[245] In *Alleged Violations of the Treaty of Amity*, Iran's Deputy Foreign Minister described the purpose of Iran's case as 'show[ing] the legitimacy of the Islamic Republic of Iran to the international community' and bringing 'political and psychological pressure on the United States'.[246] Nonetheless, the Court has disavowed the notion that it should engage in questions of legitimacy in relation to the cases before it. Rather, the ICJ has declared that it 'cannot concern itself with the political motivation which may lead a State at a particular time, or in particular circumstances, to choose judicial settlement'.[247] The Court's perspective on these political dimensions to the cases before it could be viewed as not only recognising the limits of its functions in international dispute resolution but also being cognisant of the strategic goals of states in undertaking international litigation.

241 Iranian views on international law are reflected in Karimifard (n 128) 47–8. But see Ramin Moschtaghi, 'The Relation between International Law, Islamic Law and Constitutional Law of the Islamic Republic of Iran: A Multilayer System of Conflict?' (2009) 13 *Max Planck Yearbook of United Nations Law* 375, 408.

242 President Sayyid Mohammad Khatami (1997–2005) was considered supportive of international law and institutions: see Karimifard (n 128) 61. This position then shifted during the presidency of Mahmoud Ahmadinejad (2005–2013): at 49–52.

243 'Verbatim Record 2020/11' *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v United States of America) (Preliminary Objections)* (International Court of Justice, General List No 175, 16 September 2020) 18 [17].

244 This outcome was arguably achieved in the *South China Sea* arbitration: see Douglas Guilfoyle, 'Governing the Oceans and Dispute Resolution: An Evolving Legal Order?' in Leon Wolff and Danielle Ireland-Piper (eds), *Global Governance and Regulation: Order and Disorder in the 21st Century* (Routledge, 2018) 173, 188 ('Governing the Oceans and Dispute Resolution').

245 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Jurisdiction and Admissibility)* [1986] ICJ Rep 392, 435 [96].

246 'US Preliminary Objections, *Alleged Violations*' (n 193) 59 [5.22], citing remarks of Iranian Deputy Foreign Minister Abbas Araghchi: 'List of Annexes Accompanying the Preliminary Objections in the Case concerning Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights', *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v United States of America)* (International Court of Justice, General List No 175, 23 August 2019) vol III, annex 94 ('Complaint against US to Prove Iran's Legitimacy: Hague's Ruling Not Binding').

247 *Border and Transborder Armed Actions (Nicaragua v Honduras) (Jurisdiction and Admissibility)* [1988] ICJ Rep 69, 91 [52].

That Iran has brought cases against the US reflects a trend of smaller states resorting to litigation against more powerful states, which has been evident at the ICJ[248] and under other dispute settlement regimes.[249] Notably, under the *United Nations Convention on the Law of the Sea*, smaller states have relied on the compulsory jurisdiction available in that treaty to engage in arbitration against relatively more powerful states.[250] The reasons for this phenomenon include an effort to level the playing field by coming to the Court on terms of sovereign equality and seeking a platform to denounce questionable legal positions held.[251] The legal outcomes may not be decisive in resolving the dispute but seemingly carry some weight in ongoing engagements between the states concerned beyond the confines of the Court. This strategy may hold particular importance for Iran with its current cases at the ICJ.

V Conclusion

The role of the ICJ, as the primary judicial organ of the UN, is 'to decide in accordance with international law such disputes as are submitted to it'.[252] Yet scholars have noted that the roles for international courts extend beyond the settling of disputes.[253] These functions include lawmaking and stabilising normative expectations about the operation of international law, as well as legitimating the conduct of states.[254] Close attention has also been paid to the role of international courts vis-à-vis the international regime within which any

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248 See Posner (n 219) 7.

249 Guilfoyle, 'The Chagos Archipelago before International Tribunals' (n 5) 750 n 3.

250 See, eg, *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom) (Award)* (Permanent Court of Arbitration, Case No 2011-03, 18 March 2015); *Arctic Sunrise Arbitration (Netherlands v Russia) (Award on Merits)* (Permanent Court of Arbitration, Case No 2014-02, 14 August 2015), *South China Sea Arbitration (Philippines v China) (Award)* (Permanent Court of Arbitration, Case No 2013-19, 12 July 2016). For discussion of these cases, including the dynamic of small states litigating against larger states, see Guilfoyle, 'Governing the Oceans and Dispute Resolution' (n 244) 178–82.

251 Guilfoyle has observed:

> The function of litigation in the international community is that it affirms the formal equality of small States and great powers. When great powers accuse small States of destabilising the system through recourse to litigation the allegation seems somewhat farcical. What have great powers to fear? What they have to fear, other than embarrassment, is delegitimisation of their policies.

Guilfoyle, 'Governing the Oceans and Dispute Resolution' (n 244) 189. See also the comments of Jan Paulsson in Michael Byers et al, 'International Law as a Counterweight to Power Asymmetries in International Politics' (2019) 113 *American Society of International Law Proceedings* 75, 79.

252 *Statute of the International Court of Justice* art 38(1).

253 In this regard, David D Caron has noted that '[w]hen assessing the value or effectiveness of international courts and tribunals scholars should not only proceed in terms of how well a given institution serves its constituted ends, but also how well it serves the unstated purposes': David D Caron, 'Towards a Political Theory of International Courts and Tribunals' (2006) 24(2) *Berkeley Journal of International Law* 401, 410.

254 von Bogdandy and Venzke (n 165) 50.

particular court might sit.[255] This latter dynamic is less relevant when studying the interaction of a court with one party that appears before it. The focus in this study has been on discussing the context of each of Iran's encounters with the ICJ and suggesting the influence of and limits on the Court in resolving disputes, where a middle power confronts a great power in litigation. In sum, the analysis has indicated that international litigation at the Court has been deployed strategically within the parties' ongoing relationships, but each encounter is necessarily bounded because of the Court's specific dispute settlement function.

Nonetheless, in relation to *Certain Iranian Assets*, Chimène Keitner has observed that '[i]n the current international environment, it is noteworthy that two of the world's most bitter adversaries are currently confronting each other with words rather than weapons to resolve this outstanding dispute'.[256] There is undoubted value in Keitner's position that court battles are preferable to armed battles,[257] but this case study on Iran has shown the limits of international court encounters. The importance of international legal discourse was only one factor among many in Iran's cases, and both the expectation and reality of compliance were close to naught.

Instead, this study of Iran's experience has reflected possible advantages and shortcomings of pursuing cases at the ICJ where national interests are a strong determinant of how a case is run and in how states respond to the Court's decisions. Essentially, it takes more than the Court to resolve a dispute. Yet the complexity of the cases involving Iran and the 'deeply troubled bilateral history between Iran and the United States'[258] provide a richer story to explain. Acknowledging the historic and political context involved in each case and the iterative engagements of the parties can assist in understanding the role of the Court in contributing to the resolution of Iran's disputes over an extended period of time. The cases at the Court have always been pieces that need to be fitted into a big puzzle, and this situation remains true at the time of writing, as Iran's current cases against the US await to be resolved. It means that there is a role for the Court to play in resolving differences between states (when jurisdiction is available), but the panoply of options identified in art 33 of the *Charter of the United Nations* may all be needed for an interstate dispute to be finally settled.

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[255] See, eg, Geir Ulfstein, 'International Courts and Judges: Independence, Interaction, and Legitimacy' (2014) 46(3) *New York University Journal of International Law and Politics* 849, 852–3; Karen J Alter, 'The Multiple Roles of International Courts and Tribunals: Enforcement, Dispute Settlement, Constitutional and Administrative Review' in Jeffrey L Dunoff and Mark A Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (Cambridge University Press, 2013) 345.

[256] Chimène Keitner, 'World Court Rules on Iran Challenge to US Suits for Acts of Terrorism: An Explainer', *Just Security* (Blog Post, 19 February 2019) <https://www.justsecurity.org/62604/unpacking-icj-judgment-certain-iranian-assets/>, archived at <https://perma.cc/3P9Y-EJ26>. Emilia Justyna Powell has observed more generally that '[s]tates who bargain in the shadow of the Court do so more effectively, are better able to avoid militarized conflict, and are more likely to end overall contention over an issue': Emilia Justyna Powell, 'Islamic Law States and the International Court of Justice' (2013) 50(2) *Journal of Peace Research* 203, 203, citing Sara McLaughlin Mitchell and Emilia Justyna Powell, *Domestic Law Goes Global: Domestic Legal Traditions and International Courts* (Cambridge University Press, 2011).

[257] Andrew A Jacovides has reflected on the view that court battles are also cheaper: Jacovides (n 160) 261.

[258] 'US Preliminary Objections, *Certain Iranian Assets*' (n 178) 2 [1.4].