

ICJ FINDS IRAN ENTITLED TO COMPENSATION FROM USA REGARDING ASSET SEIZING MEASURES

Certain Iranian Assets (Iran v USA)

Introduction

By a decision handed down on 30 March 2023, the International Court of Justice found that the USA had breached its obligations under the 1955 Treaty of Amity, Economic Relations and Consular Rights (“the ToA”) regarding legislative and judicial measures taken concerning Iranian assets in the USA.

Background

The State Parties’ substantive obligations under the ToA include: (1) under Article IV(1), affording “*fair and equitable treatment*” to each other’s nationals and companies (and their property and enterprises), not applying unreasonable or discriminatory measures, and ensuring lawful contractual rights are afforded effective means of enforcement in national law; and (2) under Article IV(2), a protection against expropriation without just compensation.

After it designated, in 1984, Iran as a ‘State sponsor of terrorism’, the USA took certain legislative measures.

In 1996, the USA amended its Foreign Sovereign Immunities Act to remove adjudicative and enforcement immunity of designated ‘State sponsors of terrorism’ for certain categories of cases (“the FSIA Amendment”). The FSIA Amendment was subsequently broadened to allow execution against all property of entities owned by a designated ‘State sponsor of terrorism’ irrespective of whether it had previously been blocked by the US Government.

In 2002, the Terrorism Risk Insurance Act enabled enforcement measures to be taken on judgments entered under the FSIA Amendment;

In 2012, Executive Order 13599 blocked all assets in the US jurisdiction of the Iranian Government (including Iran’s central bank Bank Markazi (“BM”)) and other Iranian financial institutions. The Iran Threat Reduction and Syria Human Rights Act subjected BM’s assets to execution measures to satisfy Iran’s debts under default judgments.

After the FSIA Amendment, plaintiffs began to bring actions against Iran in the US courts seeking damages for deaths/injuries caused by acts allegedly supported by Iran. Iran would decline to appear in those lawsuits, contending the US legislation breached International Law. Many default judgments were entered against Iran and other Iranian State entities. Iranian assets, including BM’s assets, were executed against and distributed to judgment creditors.

CONTACT:

On 14 June 2016, Iran commenced ICJ proceedings seeking, *inter alia*, reparations and a declaration that Iran and its State-owned companies were immune from the US courts' jurisdiction (including their enforcement jurisdiction). The USA announced its withdrawal from the Treaty of Amity on 3 October 2018.

Decision

The ICJ rejected various defences argued by the USA, including that: (1) Iran's claim was inadmissible under the "clean hands" doctrine; (2) Iran's claim constituted an abuse of rights by using the ToA to circumvent obligations to pay judgment debts; (3) Iran's claim fell inside the ToA's "arms trafficking" and "essential security" exceptions.

The ICJ held the USA had breached its Article III(1) obligation to recognise the juridical status of Iranian companies. The US measures "*employ[ed] very broad terms, which are capable of encompassing any legal entity, regardless of Iran's type of degree of control over them*" and "*plainly disregarded the Iranian companies' own legal personality*". The US measures were, in those circumstances, "*unreasonable*" and breached Article IV(1).

The USA had also breached Article IV(2) concerning the prohibition of takings except for a public purpose and with prompt payment of just compensation.

However, the ICJ rejected (on jurisdictional grounds) Iran's claim concerning over US\$1.75 billion of BM's assets held in a Citibank New York account. Finding Iran had provided insufficient evidence that BM engaged in purely commercial (not sovereign) activity, the ICJ held BM was not within the ToA's definition of a "*company*".

The ICJ determined Iran was entitled to compensation. The quantum will, absent party agreement within 24 months of the judgment, be determined in a further phase of the proceedings.

Concluding Remarks

The ICJ's judgment in *Certain Iranian Assets* has been claimed as a victory by both States. It is likely to have significant implications for those advising States and other parties on the impact of international sanctions, and the interplay between sanctions regimes and investment-treaty protections.

The decision is available [here](#).

McNair International has substantial experience advising and acting on issues involving both international sanctions regimes and investor-state dispute settlement, and is well placed to assist with such matters.