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SEPARATE OPINION OF JUDGE *AD HOC* MOMTAZ

[Translation]

Iran's claims based on the violation of sovereign immunities guaranteed by customary international law relate to the interpretation and application of the Treaty of Amity, Economic Relations, and Consular Rights of 15 August 1955 — The existence of a dispute between the Parties regarding the interpretation of Article XI, paragraph 4 — The object and purpose of the Treaty, as set out in Article I, confirm that the Treaty of Amity must be interpreted in accordance with the customary rules on the immunities of States — The essential role of Bank Markazi in the implementation of certain rights deriving from the Treaty of Amity — Article XI, paragraph 4, must be interpreted taking account of the rules of customary international law on immunities, pursuant to Article 31, paragraph 3 (c), *of the Vienna Convention on the Law of Treaties — The* a contrario *interpretation of Article XI, paragraph 4, of the Treaty of Amity — The measures taken by the United States authorities on the basis of the legislation modifying the Foreign Sovereign Immunities Act are not in conformity with the customary rules relating to the immunities of States — The second preliminary objection to jurisdiction should have been rejected and the dispute between the Parties as to the interpretation of Article XI, paragraph 4, settled at the merits stage of the case.*

1. In this opinion I will explain why I was unable to support the conclusions reached by the Court in point (2) of the operative clause of the Judgment, namely its decision to uphold the second preliminary objection to jurisdiction raised by the United States of America.

2. With this second objection to jurisdiction, the United States asked the Court to dismiss

> "as outside [its] jurisdiction all claims that U.S. measures that block the property and interests in property of the Government of Iran or Iranian financial institutions . . . violate any provision of the Treaty" (final submissions of the United States, para. *(b)*).

This objection relates to Iran's claims that there has been a failure to respect the immunity from jurisdiction and enforcement of entities owned or controlled by the Iranian State, notably its Central Bank, Bank Markazi. The United States argued that the Treaty of Amity "does not contain any provisions that afford immunities to Iran or Iranian entities" and that, consequently, there is no dispute capable of falling within the scope of the compromissory clause in Article XXI, paragraph 2 (Preliminary Objections of the United States (POUS), para. 1.14).

3. The United States contends that Iran's claims contesting the blocking of "[a]ssets to a value of about USD 2 billion belonging to Iranian companies [which] have already been seized and have either been turned over to third parties or are currently frozen in accounts in the United States" (Memorial of Iran (MI), para. 1.4) are founded on US Executive Order 13599 of 5 February 2012. This order authorizing enforcement proceedings against the assets of Iran's Central Bank, in execution of the judgments of United States courts against the Iranian State in respect of alleged acts of terrorism, merely supplemented the amendment of 30 September 1996 to the Foreign Sovereign Immunities Act (FSIA) of 21 October 1976. That amendment permitted the abrogation of immunities in any case

> "in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources . . . for such an act" (Section 1605 *(a) (7)* of the FSIA).

The scope of this exception was extended in 2008 (see Section 1605 A of title 28 of the United States Code, as adopted by Section 1083 *(a) (1)* of the US National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, 122 Stat. 206 (MI, Ann. 15)). The measures in question are justified as being intended to protect the essential interests of the United States, pursuant to Article XX, paragraph 1 *(d)*. According to the Court in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, "whether a measure is necessary to protect the essential security interests of a party is not . . . purely a question for the subjective judgment of the party" (*Merits, Judgment, I.C.J. Reports 1986*, p. 141, para. 282).

Introduction

4. Article XI, paragraph 4, of the Treaty of Amity reads as follows:

> "No enterprise of either High Contracting Party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial, shipping or other business activities within the territories of the other High Contracting Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein."

5. In this case, the Parties hold clearly opposing views as to whether Article XI, paragraph 4, recognizes immunities as a procedural defence for entities owned or controlled by the Iranian State when those entities are acting in a sovereign capacity (*jure imperii*) (MI, paras. 1.26, 1.37, 5.13; see CR 2018/29, p. 31, paras. 22-23 (Boisson de Chazournes)). On the one hand, Iran claims that the measures adopted by the United States prevented Iranian entities, including those acting on behalf of the Iranian State, from asserting their immunity before courts of justice and administrative agencies, even though Article XI, paragraph 4, "confirms the Treaty Parties' intention that *inter alia* State-owned or controlled corporations, be entitled to immunity in respect of acts *jure imperii*" (MI, para. 5.7). According to Iran,

> "[t]his provision confirms by strong implication the Treaty parties' understanding of an international law entitlement to immunity *iure imperii*. That implication follows from the wording and the very existence of Article XI (4) in the Treaty, as there would have been no need to include such a provision had there been no understanding of the entitlement to sovereign immunity in the first place." (CR 2018/31, p. 24, para. 42 (Wordsworth); see also the Written Statement of Iran, para. 5.40.)

The United States, on the other hand, considers that

> "[a]part from a single provision *barring* State-owned business enterprises from raising a sovereign immunity defense in the other State's courts (Article XI (4)), the Treaty does not govern, and was not intended to govern, questions relating to sovereign immunity of the State as such or other State entities" (POUS, para. 8.2; CR 2018/28, p. 30, para. 23 (Grosh)).

It follows that Iran's views are positively opposed by the United States as regards the scope of application of immunities under the Treaty of Amity and, in particular, whether the Treaty enables the State companies of a Contracting Party to use immunities as a defence. There is thus a dispute between the Parties as to the meaning and scope of this provision.

6. According to the Court's well-established jurisprudence, a dispute is a "disagreement on a point of law or fact, a conflict of legal views or of interests" between parties (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11). For a dispute to exist, "[i]t must be shown that the claim of one party is positively opposed by the other" (*South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328). "'[T]he two sides [must] hold clearly opposite views concerning the question of the performance or non-performance of certain' international obligations" (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 26, para. 50, quoting *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74). More specifically, in order to determine whether a dispute concerns the interpretation or application of the Treaty of Amity, the Court "must ascertain whether the violations of the Treaty . . . pleaded . . . do or do not fall within the provisions of the Treaty and whether, as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain" (*Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 810, para. 16). Since there is a "difference of opinion" between the Parties regarding the scope of one of the Treaty's provisions, the dispute is one which falls within the scope of the compromissory clause (*Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment of 6 June 2018*, p. 39, para. 134).

7. Thus, I do not support the Court's conclusion that

> "Iran's claims based on the alleged violation of the sovereign immunities guaranteed by customary international law do not relate to the interpretation or application of the Treaty of Amity and, as a result, do not fall within the scope of the compromissory clause in Article XXI, paragraph 2" (Judgment, paragraph 80).

The Court should have rejected the preliminary objection raised by the United States and settled the dispute at the merits stage of the case by interpreting Article XI, paragraph 4, in light of the rules of international law on the interpretation of treaties.

I. The interpretation of Article XI, paragraph 4, in light of the object and purpose of the Treaty

8. A treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in light of its object and purpose. The various elements found in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, which codify customary international law, are taken into account in the interpretation. Although "a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose" (*Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, pp. 21-22, para. 41), this is not always sufficient.

9. According to the preamble of the Treaty of Amity, the Parties wished to "encourag[e] mutually beneficial trade and investments and closer economic intercourse generally between their peoples". The Court has concluded from this that the object and purpose of the Treaty "was not to regulate peaceful and friendly relations between the two States in a general sense" and that, "[c]onsequently, Article 1 cannot be interpreted as incorporating into the Treaty all of the provisions of international law concerning such relations" (*Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 814, para. 28). Nevertheless, as noted by the Court,

> "Article 1 states in general terms that there shall be firm and enduring peace and sincere friendship between the Parties. The spirit and intent set out in this Article animate and give meaning to the entire Treaty and must, in case of doubt, incline the Court to the construction which seems more in consonance with its overall objective of achieving friendly relations over the entire range of activities covered by the Treaty." (*Ibid.*, p. 820, para. 52).

10. The Court further stated in the same Judgment that

> "[a]ny action by one of the Parties that is incompatible with those obligations is unlawful, regardless of the means by which it is brought about. A violation of the rights of one party under the Treaty by means of the use of force is as unlawful as would be a violation by administrative decision or by any other means" (*ibid*., pp. 811-812, para. 21).

It concluded from this that "[m]atters relating to the use of force are therefore not *per se* excluded from the reach of the Treaty of 1955" (*ibid*.). In this case, one is entitled to ask why the Court reached an entirely different conclusion with regard to Iran's claims founded on the violation of the sovereign immunities of entities acting in a sovereign capacity (*jure imperii*), when failure to comply with these rules obstructs the implementation of rights and obligations deriving from the Treaty of Amity.

11. In my opinion, the violation of the sovereign immunities of Bank Markazi in relation to its activities *jure imperii* is capable of impeding freedom of commerce between Iran and the United States and thus of depriving the Treaty of its object and purpose. As noted by the Court,

> "it would be a natural interpretation of the word 'commerce' in Article X, paragraph 1, of the Treaty of 1955 that it includes commercial activities in general — not merely the immediate act of purchase and sale, but also the ancillary activities integrally related to commerce." (*Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 819, para. 49.)

12. According to its statutes, Bank Markazi is the guardian and regulator of the monetary system, both internally and internationally, and of Iran's monetary policy. As the regulatory authority of the monetary and credit system, it fulfils a range of very different functions directly related to commerce, which is promoted and protected by the various provisions of the Treaty of Amity (see Judgment, paragraphs 78-79). For example, under its statutes, it falls to the Central Bank to exercise control over any transactions involving gold, foreign currencies and bank holdings (see Art. 11 of the 1972 Monetary and Banking Act, MI, Vol. IV, Ann. 73; see also Arts. 31-32 of the 1960 Monetary and Banking Act). It is also the Central Bank which guarantees the provision of the liquid assets needed by Iranian companies and nationals to invest, export and import. It is above all during a period of crisis, as is currently the case in Iran, that banks turn to the Central Bank for funds to help nationals and businesses conduct their commercial activities. This is the Bank's essential function, to lend the money needed for trade and commercial relations. It follows that the Parties' compliance with their international obligations concerning the activities and assets of a central bank (*jure imperii*), as well as the immunities associated therewith, are in fact a precondition for upholding the specific rights and obligations provided for in the Treaty. In other words, the infringement of Bank Markazi's immunity from enforcement resulting from the United States' measures is a major obstacle to the implementation of the Treaty and to the smooth and uninterrupted flow of commerce between the territories of the two Parties to that Treaty.

II. The interpretation of Article XI, paragraph 4, in light of Article 31, paragraph 3, subparagraph *(c)*, of the Vienna Convention on the Law of Treaties

13. Article 31, paragraph 3, subparagraph *(c)*, of the Vienna Convention on the Law of Treaties provides that in the interpretation of a treaty "[t]here shall be taken into account, together with the context: . . . *(c)* Any relevant rules of international law applicable in the relations between the parties." To my mind, this rule sets general international law as the backdrop for the interpretation of a treaty or one of its provisions. It codifies the customary international law (see, for example, *Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2009*, p. 237, para. 47; *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 46, para. 65).

14. As previously emphasized by the Arbitral Tribunal in the *Pinson* v. *Mexico* case, "[a]ny international Convention must be deemed to refer tacitly to general law in respect of any question that it does not itself expressly and differently resolve." (*Georges Pinson (France)* v. *United Mexican States, Decision No. 1, 19 October 1928, Reports of International Arbitral Awards*, Vol. V, p. 422, para. 50, subpara. 4. *[Translation by the Registry.]*) Similarly, the Court has repeatedly stated that "an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation" (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 31, para. 53). Hence, in the past, the Court did not hesitate to take account of the rules on the use of force in international law when interpreting the Treaty of Amity (see *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, p. 182, para. 41).

15. Other courts and tribunals have followed the Court's example, taking account of the rules on State immunity in the interpretation of treaty provisions of a specific nature. Thus, the European Court of Human Rights (ECHR) noted in its judgment in the case of *Al-Adsani* v. *the United Kingdom* that: "[t]he [European] Convention [on Human Rights] should so far as possible be interpreted in harmony with other rules of international law of which it forms part, including those relating to the grant of State immunity" (ECHR, *Al-Adsani* v. *the United Kingdom, Application No. 35763/97, Judgment of 21 November 2001*, para. 55; see also *Jones and Others* v. *the United Kingdom, Applications Nos. 34356/06 and 40528/06, Judgment of 14 January 2014*, para. 195). The ECHR therefore concluded in paragraph 56 of its judgment that:

> "[i]t follows that measures taken by a High Contracting Party which reflect generally recognised rules of public international law on State immunity cannot in principle be regarded as imposing a disproportionate restriction on the right of access to a court as embodied in Article 6 § 1. Just as the right of access to a court is an inherent part of the fair trial guarantee in that Article, so some restrictions on access must likewise be regarded as inherent, an example being those limitations generally accepted by the community of nations as part of the doctrine of State immunity." (ECHR, *Al-Adsani* v. *the United Kingdom, Application No. 35763/97, Judgment of 21 November 2001*, para. 56.)

16. If there is no question of incorporating the rules on immunities as applicable law falling within the Court's jurisdiction under Article XXI of the Treaty, it is therefore wrong to interpret Article XI, paragraph 4, as the Court has done here, without taking account of the rules of customary international law on immunities because of the Treaty's limited object (see Judgment, paragraph 65). As the report of the International Law Commission (ILC) on fragmentation explains, "[a]ll treaty provisions receive their force and validity from general law, and set up rights and obligations that exist alongside rights and obligations established by other treaty provisions and

rules of customary international law" (Report of the Study Group of the ILC, *Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law*, UN doc. A/CN.4/L.682, para. 414). As the ILC rightly pointed out, Article 31, paragraph 3, subparagraph *(c)*, "gives expression to the objective of 'systematic integration' according to which, whatever their subject matter, treaties are a creation of the international legal system and their operation is predicated upon that fact" (*Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law*, reproduced in the *Yearbook of the ILC, 2006*, Vol. II, Part Two, p. 180, para. 17). Where appropriate, this rule makes it possible to counteract the process of normative fragmentation in a horizontal system such as that of international law. I am therefore disappointed that the Court did not adopt an interpretative approach to Article 31, paragraph 3, subparagraph *(c)*, in its Judgment and failed to take sufficient account of the rules on immunities.

III. The *a contrario* interpretation of Article XI, paragraph 4

17. The above reading of Article XI, paragraph 4, is also confirmed by an *a contrario* interpretation of this provision. First, it should be noted that the Vienna Convention on the Law of Treaties was not intended to cover every principle or technique of interpretation in general international law. In addition to the general rule of interpretation set out in Article 31 of the Vienna Convention, and the supplementary means of interpretation described in Article 32, there are other principles, such as the maxim *ut res magis valeat quam pereat* and *a contrario* reasoning, which do not appear among those rules. When drawing up its draft Articles on the Law of Treaties, the ILC did not intend to codify all the rules governing interpretation, but rather "to codify the comparatively few rules which appear to constitute the strictly legal basis of the interpretation of treaties" (*Third Report on the Law of Treaties*, Sir Humphrey Waldock, Special Rapporteur, UN doc. A/CN.4/167, reproduced in the *Yearbook of the ILC, 1964*, Vol. II, p. 54, para. 8). The Special Rapporteur was thus clearly of the view that the ILC was not expected to try to codify all rules of interpretation, which often depend on the specific context and circumstances.

18. In its Judgment on the preliminary objections in the case concerning *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia)*, the Court observed that:

> "An a *contrario* reading of a treaty provision — by which the fact that the provision expressly provides for one category of situations is said to justify the inference that other comparable categories are excluded — has been employed by both the present Court (see, e.g., *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application by Honduras for Permission to Intervene, Judgment, I.C.J. Reports 2011 (II)*, p. 432, para. 29) and the Permanent Court of International Justice (*S.S. 'Wimbledon', Judgments, 1923, P.C.I.J., Series A, No. 1*, pp. 23-24). Such an interpretation is only warranted, however, when it is appropriate in light of the text of all the provisions concerned, their context and the object and purpose of the treaty. Moreover, even where an *a contrario* interpretation is justified, it is important to determine precisely what inference its application requires in any given case." (*Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 116, para. 35.)

19. In this case, an *a contrario* interpretation of Article XI, paragraph 4, might lead the Court to conclude that the Treaty's scope of application, in particular the scope of the term "company", does not exclude entities carrying out activities *jure imperii*. This *a contrario* interpretation would, moreover, be consistent with Article III, paragraph 1, which provides that "'companies' means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit". Nor would an *a contrario* interpretation of Article XI,

paragraph 4, be an evolutionary interpretation of the term "company". The Court has noted on a number of occasions that generic terms in treaties may have "a meaning or content capable of evolving, not one fixed once and for all, so as to make allowance for, among other things, developments in international law" (*Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2009*, p. 242, para. 64; *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 818, paras. 45-48).

20. With regard to the scope of Article XI, paragraph 4, there is still some uncertainty in this case as to whether State immunities are excluded from the Treaty's scope of application, or, conversely, if they are covered by the interpretation of the above provision. In my view, the interpretation of this provision must take account of the following elements.

21. First, when the Treaty of Amity was concluded in 1955, the erosion of "absolute" immunity had already begun and the United States had adopted the doctrine of restrictive immunity. Article XI, paragraph 4, therefore, merely codified certain specific exceptions to the general rules on immunities accorded to State entities, rather than excluding the application of those rules to every entity covered by the Treaty's scope of application. Second, the English version of Article XI, paragraph 4, which is authoritative, uses the term "immunity" to limit the ability of State companies acting *jure gestionis* to claim immunity from jurisdiction or enforcement and thereby upset the competitive equilibrium between public and private enterprises. This is a specific situation that in no way prejudges the question of the application of sovereign immunities to the central banks of the High Contracting Parties. Third, Article XI, paragraph 4, must be read in conjunction with Article IV, paragraph 2. Minimum protection in international law for companies acting *jure imperii* must include the régime of immunities; the inverse would lead to the imposition of an artificial equilibrium between private and State companies, to the latter's detriment, and this would be contrary to the minimum conditions to which Article IV, paragraph 2, refers. Fourth, in any event, the exact nature of the activities and functions of a State's central bank, and whether they can be characterized as *jure imperii*, is a question of substance, and the Court should not have prejudged conclusions it might reach on the merits.

22. In other words, having recourse to the *a contrario* interpretation of Article XI, paragraph 4, would not be an artificial digression. Quite the opposite; it would be in keeping with the object and purpose of the Treaty and the ordinary meaning of its provisions.

Conclusion

23. Ultimately, Article XI, paragraph 4, of the Treaty of Amity should have been interpreted in light of general international law on the immunities of States and their central banks, as codified in Article 21, paragraph 1, subparagraph *(c)*, of the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property, and in Article 4, paragraph 2, of the 1972 European Convention on State Immunity, and as set out in Section 1605 *(b) (1)* of the 1976 FSIA, which provides that "the property of a foreign state shall be immune from attachment and from execution".

24. It should also be noted that the very basis for the United States' measures at issue, namely the amendment to the FSIA by which the legislature introduced a "terrorism exception", the scope of which was enlarged by subsequent legislative amendments, implemented in this case by Executive Order 13599, is not in accordance with the general international law on immunity. As previously stated by the PCIJ in the *Greco-Bulgarian "Communities"* case, "it is a generally

accepted principle of international law that . . . the provisions of municipal law cannot prevail over those of the treaty" (*Advisory Opinion, 1930, P.C.I.J., Series B, No. 17*, p. 32). This "fundamental principle of international law" (*Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion, I.C.J. Reports 1988*, p. 34, para. 57) was also reflected in Article 27 of the Vienna Convention on the Law of Treaties, which states that "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty", and whose customary nature is not in doubt (*Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008*, p. 222, para. 124).

25. At the same time, it is true that "[r]eliance by a State on a novel right or an unprecedented exception to the principle might, if shared in principle by other States, tend towards a modification of customary international law" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 109, para. 207). However, the withdrawal of immunities for certain specified acts, as results from the United States' legislation, has not been adopted by other States. On the contrary, as noted by the Court in the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)*, "this amendment has no counterpart in the legislation of other States. None of the States which has enacted legislation on the subject of State immunity has made provision for the limitation of immunity on the grounds of the gravity of the acts alleged" (*Judgment, I.C.J. Reports 2012 (I)*, p. 138, para. 88; only Canada has since adopted similar legislation). The Court concluded that "under customary international law as it presently stands, a State is not deprived of immunity by reason of the fact that it is accused of serious violations of international human rights law or the international law of armed conflict" (*ibid.*, p. 139, para. 91).

26. As the Court stated in the case concerning *Right of Passage over Indian Territory (Portugal* v. *India)*, "[i]t is a rule of interpretation that a text emanating from a Government must, in principle, be interpreted as producing and as intended to produce effects in accordance with existing law and not in violation of it" (*Preliminary Objections, Judgment, I.C.J. Reports 1957*, p. 142).

27. In light of the above, it is my view that the second preliminary objection to jurisdiction raised by the United States should have been rejected by the Court and the question resolved at the merits stage of the case.

(Signed) Djamchid MOMTAZ.

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