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U.S. Supreme Court Upholds Law Facilitating Compensation for Victims of Iranian Terrorism

On April 20, 2016, the U.S. Supreme Court handed down *Bank Markazi, aka Central Bank of Iran v. Peterson*, which upheld the Iran Threat Reduction and Syria Human Rights Act of 2012. The Act "makes available for postjudgment execution" by American victims of Iran-sponsored acts of terrorism a specific group of assets held in New York on behalf of the Central Bank of Iran.[1] Emphasizing that foreign policy judgments by the political branches require "respectful review by courts," the Court rejected Iran's argument that the statute violated separation of powers principles.[2] The main practical effect of the *Bank Markazi* decision was to clear the way for certain plaintiffs to collect on existing merits judgments in their favor.[3] In response, Iran filed a claim against the United States with the International Court of Justice (ICJ) under the 1955 Treaty of Amity between the two countries.[4]

The *Bank Markazi* decision results from efforts by victims of Iran-sponsored acts of terrorism, including the 1983 Beirut Marine Barracks bombing,[5] to collect on judgments they won against Iran.[6] The framework for their claims was established by the Foreign Sovereign Immunities Act of 1976 (FSIA). The FSIA sets a baseline rule of foreign sovereign immunity, providing that "a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States."[7] The Act then carves out various exceptions to that immunity, one of which pertains to state sponsored terrorism.[8]

Congress originally enacted the terrorism exception in 1996 (and amended it in 2008) in response to various plaintiffs' unsuccessful attempts to sue countries responsible for terrorist attacks.[9] The relevant text lifts sovereign immunity if two conditions are satisfied. First, the plaintiff must bring a case

[1] Bank Markazi v. Peterson, 136 S. Ct. 1310, 1316 (2016).

[2] *Id.* at 1317.

[3] *See id.*

[4] *See* ICJ Press Release, Iran Institutes Proceedings Against the United States with Regard to a Dispute Concerning Alleged Violations of the 1955 Treaty of Amity (June 15, 2016), *at* http://www.icj-cij.org/docket/files/164/19032.pdf.

[5] "At approximately 6:25 a.m. Beirut time, . . . [a] truck crashed through a concertina wire barrier and a wall of sandbags, and entered the barracks. When the truck reached the center of the barracks, the bomb in the truck detonated. The resulting explosion was the largest non-nuclear explosion that had ever been detonated on the face of the Earth." Peterson v. Islamic Republic of Iran, 264 F. Supp. 2d 46, 56 (D.D.C. 2003) (footnote omitted). "As a result of the Marine barracks explosion, 241 servicemen were killed . . . ." *Id.* at 58. "The United States has long recognized Iran's complicity in this attack." *Bank Markazi*, 136 S. Ct. at 1320 n.6. (citing H.R. REP. NO. 104-523, pt. 1, at 9 (1996) ("After an Administration determination of Iran's involvement in the bombing of the Marine barracks in Beirut in October 1983, Iran was placed on the U.S. list of state sponsors of terrorism on January 19, 1984.")).

[6] *See Bank Markazi*, 136 S. Ct. at 1316.

[7] Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §1604 (2012).

[8] 28 U.S.C. §1605A. *See also* John R. Crook, Contemporary Practice of the United States Relating to International Law, 102 AJIL 350, 350 (2008).

[9] "The bill I am introducing today will bring clarity to this law on behalf of victims of terrorism and reaffirm their right to sue and collect damages from state sponsors of terrorism. There are several reasons why the law needs to be improved. First, the courts decided in 2004 in Cicippio-Puleo v. Islamic Republic of Iran that, contrary to the intent of the Flatow amendment, there would be no Federal private right of action against foreign governments. The ruling stated that there could only be legal action against individual officials and employees of that government. Second, current law permits judgment holders to only seize assets over which a terrorist state has day-to-day managerial control, thereby allowing terrorist states to hide their assets from the victims who have successful judgments

> 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 if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.[10]

Second, the defendant state must have been officially designated a "state sponsor of terrorism"[11] by the Secretary of State as defined under section 1605A of the FSIA.[12] If both conditions are satisfied, the defendant state cannot raise a sovereign immunity defense to that suit.

The terrorism exception has proved controversial, both within the United States and internationally. From the outset, State and Justice Department officials advised against enacting the exception,[13] noting that it would put the United States out of step with the practice of other states regarding sovereign immunity.[14] They warned that not only could such a deviation erode the credibility of the FSIA as a whole,[15] but that it could also interfere with foreign policy decisions, such as the imposition of sanctions.[16] Furthermore, the State Department had advised that enactment of the exception might prompt other states to respond by enacting their own reciprocal exceptions, perhaps for "other kinds of alleged wrongdoing that could be of concern to us."[17]

The ICJ has described the terrorism exception as virtually unique. In a case assessing the legality of Italy's exception to foreign sovereign immunity for serious human rights violations, the ICJ said the American terrorism exception had "no counterpart in the legislation of other States [and] [n]one of the States which 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

against them. Third, state sponsors of terrorism, such as Libya, which is still responsible for terrorist acts it committed in the past, have consistently abused the appeals process to delay litigation proceedings. My new legislation will address these issues and improve the ability of victims to hold state sponsors of terrorism accountable." 153 CONG. REC. S10791-01, 10793 (daily ed. Aug. 2, 2007) (statement of Sen. Lautenberg).

[10] 28 U.S.C. §1605A(a)(1).

[11] *Id.*, §1605A(a)(2)(A)(i)(I). "[T]he term 'state sponsor of terrorism' means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism." *Id.*, §1605A(h)(6).

[12] Additionally, the claimant/victim must have been a national of the United States or member of the armed forces or "otherwise an employee of the Government of the United States" when the act occurred and, if the act occurred in the foreign state against which the claim is brought, the claimant must afford "the foreign state a reasonable opportunity to arbitrate the claim." *Id.*, §1605A (a)(2)(A)(ii)-(iii).

[13] *See The Foreign Sovereign Immunities Act: Hearing on S. 825 Before the Subcomm. on Courts and Administrative Practice of the Judiciary Comm.*, 103d Cong. (1994).

[14] *See id.* at 13–14 (prepared Statement of Jamison S. Borek, Deputy Legal Adviser, Department of State) ("We are not aware of any instance in which a state permits jurisdiction over such tortious conduct of a foreign state without territorial limitations.").

[15] *Id.* at 14.

[16] *See id.*

[17] *Id.* at 15.

alleged."[18] (One month after the ICJ decision, Canada enacted a similar exception for terrorist acts.[19])

A number of plaintiffs have relied on the FSIA's terrorism exception to secure jurisdiction against Iran and win billions of dollars in default judgments. The winning plaintiffs, however, faced a problem when it came to execution: although the terrorism exception permits personal jurisdiction over Iran, victims of terrorism often found it practically and legally challenging to identify Iranian assets that would actually be subject to collection proceedings.[20] As the U.S. Supreme Court explained,

> Subject to stated exceptions, the FSIA shields foreign-state property from execution. When the terrorism exception was adopted, only foreign-state property located in the United States and "used for a commercial activity" was available for the satisfaction of judgments. Further limiting judgment-enforcement prospects, the FSIA shields from execution property "of a foreign central bank or monetary authority held for its own account."[21]

In response to the difficulties that plaintiffs encountered, Congress passed the Terrorism Risk Insurance Act of 2002 (TRIA),[22] which lifts FSIA immunity against attachment and execution for certain assets that have been "blocked" by the executive branch:[23]

> Notwithstanding any other provision of law . . . in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism . . . the blocked assets[24] of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.[25]

In 2012, President Barack Obama signed a sweeping executive order that blocked "*[a]ll* property and interests in property of the Government of Iran, including the Central Bank of

[18] Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening), Judgment, 2012 I.C.J. Rep. 99, para. 88 (Feb. 3).

[19] State Immunity Act, R.S.C., 1985, c. S-18 Can.). Canada's exception states, in relevant part: "A foreign state that is set out on the list referred to in subsection (2) is not immune from the jurisdiction of a court in proceedings against it for its support of terrorism on or after January 1, 1985." *Id.* at 6.1.

[20] *See* Brief for the United States as Amicus Curiae at 2, Bank Markazi v. Peterson, 136 S.Ct. 1310 (2016) (No. 14-770). The majority of judgments remained unpaid. *Id.* at 1320.

[21] *Bank Markazi*, 136 S. Ct. at 1318 (citations omitted). The "commercial exception" provides that "[t]he property in the United States of a foreign state . . . used for a commercial activity in the United States, shall not be immune from attachment in aid of execution." 28 U.S.C. §1610. As relevant here, §1611 stipulates that "[n]otwithstanding the provisions of section 1610 of this chapter, *the property of a foreign state shall be immune from attachment and from execution, if (1) the property is that of a foreign central bank* or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution." 28 U.S.C. § 1611(b)(1) (emphasis added).

[22] *Bank Markazi*, 136 S. Ct. at 1318.

[23] *See id.*

[24] A number of programs including the International Emergency Economic Powers Act and Trading with the Enemy Act "authorize the President to 'block' particular assets in the United States." In general, blocking programs prohibit transactions concerning property of the targeted foreign government in the absence of Executive Branch authorization. Brief for the United States as Amicus Curiae at 3, *Bank Markazi*, 136 S. Ct. 1310 (No. 14-770).

[25] Terrorism Risk Insurance Act, H.R. 3210, 107th Cong. §201(a) (2002) (codified at 28 U.S.C. § 1610(f)(1)(A)).

Iran, that are in the United States."[26] While this order clearly triggered the TRIA exception to FSIA execution immunity for all covered assets, its applicability to some assets was nonetheless contested. In the specific cases that eventually led to the Supreme Court's *Bank Markazi* decision, for example, successful judgment plaintiffs sought and obtained restraints on the transfer of Iranian assets held in a New York bank account pursuant to the FSIA's terrorism judgment execution provisions.[27] When plaintiffs initiated an action for turnover under the TRIA,[28] however, Iran argued that the precise language of the TRIA's ownership requirements had not been satisfied. In short, "Bank Markazi contended that the blocked assets were not assets 'of' Bank Markazi," but instead "were 'of' a financial intermediary which held them in the United States on Bank Markazi's behalf."[29]

Largely in response to Iran's efforts to narrowly interpret the TRIA's ownership language, Congress passed the Iran Threat Reduction and Syria Human Rights Act of 2012.[30] Section 8772 of that Act explicitly targets the specific assets at issue in the district court proceedings that gave rise to the Supreme Court's *Bank Markazi* decision.[31] Section 8772(a) makes available for execution "a blocked asset (whether or not subsequently unblocked) that is property described in subsection (b) . . . in order to satisfy judgment to the extent of any compensatory damages" caused by the acts of terrorism enumerated in the FSIA's terrorism exception.[32] Section 8772(b) then defines the relevant assets as those "identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 10 Civ. 4518 (BSJ) (GWG), that were restrained by restraining notices and levies secured by the plaintiffs in those proceedings."[33]

Before allowing execution against an asset described in section 8772(b), a court must first determine that the asset is:

> (A) held in the United States for a foreign securities intermediary doing business in the United States;
>
> (B) a blocked asset (whether or not subsequently unblocked) . . . ; and
>
> (C) equal in value to a financial asset of Iran, including an asset of the central bank or monetary authority of the Government of Iran.[34]

[26] Exec. Order No. 13,5999, 77 Fed. Reg. 6659, 6659 (Feb. 5, 2012) (emphasis added).

[27] *Bank Markazi*, 136 S. Ct. at 1320 n.10.

[28] *See id.*

[29] *Bank Markazi*, 136 S. Ct. at 1318 n.3. "[T]he bond assets have been held in a New York account at Citibank directly controlled by Clearstream Banking, S.A. (Clearstream), a Luxembourg-based company that serves 'as an intermediary between financial institutions worldwide.' Initially, Clearstream held the assets for Bank Markazi and deposited interest earned on the bonds into Bank Markazi's Clearstream account. At some point in 2008, Bank Markazi instructed Clearstream to position another intermediary—Banca UBAE, S.p.A., an Italian bank—between the bonds and Bank Markazi. Thereafter, Clearstream deposited interest payments in UBAE's account, which UBAE then remitted to Bank Markazi." *Id.* at 1321 (citations omitted).

[30] *See id.* at 1318.

[31] *See Peterson*, 2013 WL 1155576, at *24.; *see also* Peterson v. Islamic Republic of Iran, 758 F.3d 185, 188 (2d Cir. 2014) ("Although Iran argues that the TRIA ownership requirements have not been satisfied, we need not reach this issue in light of Congress's enactment of § 8772.").

[32] 22 U.S.C. §8772(a)(1) (2012).

[33] *Id.*, §8772(b).

[34] *Id.*, §8772(a)(1).

The court must then determine that "Iran holds equitable title to, or the beneficial interest in, the assets" and that no other person possesses "a constitutionally protected interest in the assets" under the Fifth Amendment to the Constitution of the United States.[35] Only then does the court order the turnover of the assets in satisfaction of valid judgments.

In response to the renewed motions by plaintiffs in these cases relying on section 8722, the District Court made the required findings and ordered the relevant assets to be turned over to plaintiffs[36] on "the two independent bases of TRIA section 201(a) and 22 U.S.C. § 8772."[37] It rejected Iran's argument that that the Act violated the separation of powers doctrine because the Act "effectively dictates the outcome of this one case."[38] On appeal, the Second Circuit upheld the District Court's decision.[39] The Supreme Court then granted certiorari.[40]

In a 6–2 decision, the Court affirmed the Second Circuit and rejected Iran's separation of powers challenge to section 8772.[41] The Court dismissed in particular Bank Markazi's argument that section 8772 impermissibly "directed certain factfindings and specified the outcome under the amended law."[42] The Court noted the long-established principles that legislation may be "particularized,"[43] that Congress may "make valid statutes retroactively applicable to pending cases,"[44] and that Congress "may indeed direct courts to apply newly enacted, outcome-altering legislation in pending civil cases."[45] The Court was therefore unmoved by the fact that section 8772 deals with "a limited category of cases"[46] that are "identified by caption and docket number."[47] In the Court's view, the Act simply establishes "new substantive *standards*, entrusting to the District Court application of those standards to the facts (contested or uncontested) found by the court."[48] While the Court suggested that at least one of the relevant findings might not be a foregone conclusion in this case,[49] it held that "[i]n any event, a statute does not impinge on judicial power when it directs courts to apply a new legal standard to undisputed facts."[50]

[35] *Id.*, §8772(a)(2).

[36] *Bank Markazi*, 136 S. Ct. at 1320–21.

[37] *Peterson*, 758 F.3d at 189.

[38] *See* Peterson v. Islamic Republic of Iran, No. 10 Civ. 4518, 2013 WL 1155576, at *31 (S.D.N.Y. Mar. 13, 2013); Brief for Petitioner on Writ of Certiorari at 19, Bank Markazi v. Peterson, 136 S. Ct. 1310 (2016) (No. 14-770).

[39] *Peterson*, 758 F.3d at 188.

[40] Peterson v. Islamic Republic of Iran, 136 S. Ct. 26 (2015).

[41] *Bank Markazi*, 136 S. Ct. at 1322.

[42] *Id.* at 1325.

[43] *Id.* at 1327.

[44] *Id.* at 1324, (quoting RICHARD FALLON, JR. ET AL., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 323, n.29 (7th ed. 2015)).

[45] *Bank Markazi*, 136 S. Ct. at 1325.

[46] *Id.* at 1326 n.23.

[47] *Id.* at 1326.

[48] *Id.* (emphasis added).

[49] The District Court made findings related to the definitions of "beneficial interest" and "equitable title." *Id.* at 1325 n.20. Furthermore, "§8772 required the District Court to determine whether the Bank owned the assets in question." *Id.* In this particular case, however, Bank Markazi conceded that "Iran held the requisite 'equitable title to, or beneficial interest in, the assets." *Id.* at 1321.

[50] *Id.* at 1325. This holding in particular appears to have severely limited the implications of some famous language from *United States v. Klein*, 80 U.S. 128 (1872), perhaps to the vanishing point. *See id.* at 146 (stating that Congress may not "prescribe rules of decision to the Judicial Department . . . in [pending] cases").

These general doctrinal observations were framed without regard to the specific subject matter of section 8772. But the Supreme Court concluded by emphasizing "that §8772 is an exercise of congressional authority regarding foreign affairs, a domain in which the controlling role of the political branches is both necessary and proper."[51] By blocking or governing the availability of foreign-state assets for attachment, Congress and the president act "[i]n pursuit of foreign policy objectives."[52] While the precise role played in the Court's conclusion by these foreign affairs considerations was not specified, the Court emphasized that such foreign policy measures "have never been rejected as invasions upon the Article III judicial power."[53]

In dissent, Justices Roberts and Sotomayor observed that "Congress has decided this case by enacting a bespoke statute tailored to this case that resolves the parties' specific legal disputes to guarantee respondents' victory."[54] They claimed that the Act thus worked a particular "type of unconstitutional interference with the judicial function, whereby Congress assumes the role of judge and decides a particular pending case in the first instance. Section 8772 does precisely that, changing the law—for these proceedings alone—simply to guarantee that respondents win. The law serves no other purpose."[55] In the dissenters' view, the Constitution prohibits such action by the legislature.

Five days after the Supreme Court decision was issued, Iran vowed to "sue the United States at the International Court of Justice at The Hague to prevent the distribution of nearly $2 billion in impounded assets."[56] Iranian Foreign Minister Javad Zarif was quoted by the Iranian state news agency as saying: "We have announced since the beginning that [the] Iranian government does not recognize the U.S. extra-territorial law and considers the U.S. court ruling to blockade Iranian funds null and void and in gross violation of the international law."[57] The same week, Iran suggested that it was considering an unspecified retaliation.[58] In a letter released by Iran's United Nations Mission to Secretary-General Ban Ki-moon, Zarif wrote:

> The principle of state immunity is one of the cornerstones of the international legal order and a rule of customary international law. . . . Its primacy has also been recognized by the community of nations, all legal systems and the International Court of Justice. . . . It is a matter of grave concern that the United States Congress, along with other branches of the U.S. Government, seem to believe that they can easily defy and breach the fundamental

[51] *Bank Markazi*, 136 S. Ct. at 1328.

[52] *Id.*

[53] *Id. See also id.* at 1322 ("Article III of the Constitution establishes an independent Judiciary, a Third Branch of Government with the 'province and duty . . . to say what the law is' in particular cases and controversies.") (quoting Marbury v. Madison, 1 Cranch 137, 177 (1803)).

[54] *Bank Markazi*, 136 S. Ct. at 1330 (Roberts, J., dissenting).

[55] *Id.* at 1332.

[56] Rick Gladstone, *Iran Threatens Lawsuit in StreetHague Court Over U.S. Ruling on $2 Billion*, N.Y. TIMES, Apr. 25, 2016, at A6.

[57] Patrick Goodenough, *Iran Threatens to Take US to Int'l Tribunal Over Supreme Court Terror Payout Ruling*, CNS NEWS (Apr. 26, 2016) *at* http://cnsnews.com/news/article/patrick-goodenough/iran-threatens-take-us-intl-tribunal-over-supreme-court-terror (alteration in original).

[58] Rick Gladstone, *Iran Hints at Retaliation Over U.S. Use of Seized Assets*, N.Y. TIMES, Apr. 28, 2016, at A3.

> principle of state immunity, by unilaterally waiving the immunity of states and even Central Banks in total contravention of the international obligations of the United States and under a groundless legal doctrine that the international community does not recognize.[59]

The Coordinating Bureau of the Non-Aligned Movement (CoB) also disparaged *Bank Markazi* as inconsistent with international law:[60] "The CoB objects to US defiance to international law through the unilateral waiving of the sovereign immunity of States and their institutions in total contravention of the international and treaty obligations of the United States and under a spurious legal ground that the international community does not recognize."[61]

On June 14, 2016, Iran filed a claim against the United States at the ICJ.[62] The pleadings allege "violations by the Government of the United States of America of the Treaty of Amity, Economic Relations, and Consular Rights between Iran and the United States of America,"[63] including by denying "fair and equitable treatment" and "freedom of access to the courts," by "applying unreasonable or discriminatory measures," and by taking property of Iranian nationals without "prompt payment of just compensation."[64]

In its ICJ pleadings, Iran alleges that the United States violated these obligations by undertaking a series of

> legislative and executive acts that have the practical effect of subjecting the assets and interests of Iran and Iranian entities, including those of the Central Bank of Iran (also known as "Bank Markazi"), to enforcement proceedings in the United States, even where such assets or interests . . . "are held by Iran or Iranian entities . . . and benefit from immunities from enforcement proceedings as a matter of international law, and as required by the [1955] Treaty."[65]

Iran also notes that "United States courts 'have repeatedly dismissed attempts by Bank Markazi to rely on the immunities to which such property is entitled" and maintains that "'the assets of Iranian financial institutions . . . have already been seized, or are in the process of being seized and transferred.'"[66] Iran also alleges violations relating to the U.S. courts' failure to recognize

[59] Letter from Dr. Javad Zarif, Minister for Foreign Affairs of the Islamic Republic of Iran, to Ban Ki-moon, UN Secretary General (Apr. 28, 2016), *available at* http://iran-un.org/en/2016/04/28/28-april-2016-letter-of-h-e-dr-m-javad-zarif-minister-for-foreign-affairs-of-the-islamic-republic-of-iran-addressed-to-h-e-ban-ki-moon-secretary-general-united-nations/.

[60] *See* Communiqué by the Coordinating Bureau of the Non-Aligned Movement in Rejection of Unilateral Actions by the United States in Contravention of International Law, in Particular the Principle of State Immunity (May 5, 2016), *available at* http://iran-un.org/en/2016/05/05/05-may-2016-communique-by-the-coordinating-bureau-of-the-non-aligned-movement-inrejection-of-unilateral-actions-by-the-united-states-in-contravention-of-international-law-in-particular-the-principle/.

[61] *Id.*

[62] ICJ Press Release, Iran Institutes Proceedings Against the United States with Regard to a Dispute Concerning Alleged Violations of the 1955 Treaty of Amity (June 15, 2016), *at* http://www.icj-cij.org/docket/files/164/19032.pdf. The treaty entered into force on June 16, 1957.

[63] *Id.* at 1.

[64] Treaty of Amity, Economic Relations, and Consular Rights, Iran-U.S., Aug. 15, 1955, 284 UNTS 93, 110, 112, 114, 116, 118.

[65] ICJ Press Release, *supra* note 62, at 1 (alterations in original).

[66] *Id.*

the "separate juridical status (including the separate legal personality) of all Iranian companies."[67] A State Department spokesman responded to notice of the filing by stating that "we believe that the United States has acted consistent with its obligations under international law."[68]

Russia Argues Enhanced Military Presence in Europe Violates NATO-Russia Agreement; United States Criticizes Russian Military Maneuvers over the Baltic Sea as Inconsistent with Bilateral Treaty Governing Incidents at Sea

In February 2016, the United States and NATO announced plans to expand their military presence in Europe. Russia responded by claiming that the United States and NATO had violated the NATO-Russia Founding Act (Founding Act).[1] Around the same time, the Russian air force conducted a series of maneuvers over the Baltic Sea that—in the view of the United States—were inconsistent with the Incidents at Sea Treaty (INCSEA) between the United States and Russia.[2] Russia defended the legality of the flights.

The Founding Act is an international instrument signed by Russia, NATO, and each individual NATO member state in 1997, at a time when NATO was considering whether to admit Poland, the Czech Republic, and Hungry into the alliance.[3] While the Founding Act is styled as a political agreement,[4] Russian President Boris Yeltsin described the act as "a firm and absolute commitment for all signatory states."[5] The Founding Act includes language that addresses the stationing of permanent forces in new NATO member states. According to the Agreement,

> NATO reiterates that in the current and foreseeable security environment, the Alliance will carry out its collective defence and other missions by ensuring the necessary interoperability, integration, and capability for reinforcement rather than by additional permanent stationing of substantial combat forces. Accordingly, it will have to rely on adequate infrastructure commensurate with the above tasks. In this context, reinforcement may take place, when necessary, in the event of defence against a threat

[67] *Id.* at 2.

[68] Asa Fitch, *Iran Sues U.S. in International Court Over Frozen Assets*, WALL ST. J. (June 16, 2016), *at* http://www.wsj.com/articles/iran-sues-u-s-in-international-court-over-frozen-assets-1466027629.

[1] Founding Act on Mutual Relations, Cooperation and Security between NATO and the Russian Federation, N. Atl. Treaty Org.-Russ., May 27, 1997, 36 ILM 1006 [hereinafter Founding Act].

[2] Agreement Between the Government of the United States of American and the Government of the Union of Soviet Socialist Republics on the Prevention of Incidents on and over the High Seas, U.S.-Soviet Union, May 25, 1972, 23 UST 1168 [hereinafter INCSEA Treaty].

[3] *See* Marian Nash (Leich), Contemporary Practice of the United States, 92 AJIL 494, 495–96 (1998); Michael R. Gordon, *Russia Agrees to NATO Plan Pushed by Clinton to Admit Nations From Eastern Bloc*, N.Y. TIMES, May 15, 1997, at A18; The White House Press Release, Fact Sheet, NATO Russia Founding Act (May 27, 1997), *at* http://clinton6.nara.gov/1997/05/1997-05-27-fact-sheet-on-nato-russia-founding-act.html.

[4] *See, e.g.*, Founding Act, *supra* note 1 ("The North Atlantic Treaty Organization and its member States, on the one hand, and the Russian Federation, on the other hand, . . . *based on an enduring political commitment undertaken at the highest political level*, will build together a lasting and inclusive peace in the Euro-Atlantic area on the principles of democracy and cooperative security.") (emphasis added).

[5] The White House Press Release, Remarks by President Clinton, French President Chirac, Russia President Yeltsin, and NATO Secretary General Solana at NATO/Russia Founding Act Signing Ceremony (May 27, 1997), *at* https://clinton4.nara.gov/WH/New/Europe/19970527-814.html; *see also* Gordon, *supra* note 3; Jack Mendelsohn, *The NATO Russian Founding Act*, ARMS CONTROL ASSOCIATION (May 1, 1997), *at* https://www.armscontrol.org/act/1997_05/jm.