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Appeal Against Arbitration Awards with Emphasis on the Jurisprudence of the Iran-United States Claims Tribunal

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ABSTRACT

When arbitration is mentioned, the concept of its finality immediately comes to mind, and the possibility of appealing arbitration awards is generally dismissed. This characteristic has made arbitration an increasingly attractive method for resolving international commercial disputes due to its expedited and cost-effective nature. However, in certain arbitration regimes, including the Iran-United States Claims Tribunal (the IUSCT, the Tribunal), the possibility of appeal under specific conditions is anticipated. This research aims to assess the feasibility of appealing arbitration awards and analyze the associated limitations, with a focus on the jurisprudence of the IUSCT. In this context, the concept of appeal in international arbitration and its distinction from analogous concepts will be examined, and the unique position of appeals in the IUSCT will be analyzed. The findings, gathered through a descriptive-analytical methodology, indicate that, in specific cases, the IUSCT provide unique avenues for appealing awards.

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Table of Contents

Introduction

In arbitration systems, awards are generally considered final and conclusive, and the possibility of appeal is limited compared to conventional judicial systems. This characteristic has rendered arbitration an appealing method for resolving international disputes due to its expedited and cost-effective nature. However, the question arises whether there exists a possibility for review or appeal of arbitration awards in specific cases, and if so, under what conditions and with what limitations.

To address this question, we aim to explore various regulations and awards from the jurisprudence of the Iran-United States Claims Tribunal (the Tribunal), which was established to resolve disputes between the Iranian government and U.S. nationals, referencing the Algiers Accords and the Tribunal's international structure. In this inquiry, several instances of appealing arbitration awards may be identified. Unlike general arbitration practices, these instances indicate a limited possibility for appeals under specific conditions. Notably, Articles 34, 35, 36, and 37 of the Algiers Accords outline conditions under which appeals from the awards of the Tribunal can occur, leading to the issuance of new awards in certain cases.

This study seeks to answer whether, through a reevaluation of the concept of appeal in arbitration, such a concept can be found akin to what is customary in courts. In other words, has the Tribunal adopted a different approach concerning the appeal of awards compared to conventional international commercial arbitration rules?

In international arbitration, the possibility of appealing awards does not parallel the concepts commonly found in domestic law; however, in exceptional cases, provisions for interpretation, supplementation, and clerical errors exist, and appeals in their strict sense are exceptionally accepted. The concept of appeal, in its strictest sense, closely aligns with the awards issued by the Tribunal.

Generally, in international arbitration practice, the principle of finality of arbitration awards holds significant importance. Accordingly, the arbitration laws of many countries and international bodies, such as UNCITRAL and the International Chamber of Commerce, do not permit appeals against arbitration awards. Thus, the background of the research indicates that appeals in arbitration awards are typically confined to concepts such as interpretation, supplementation, and clerical errors, with numerous studies available in both Persian and non-

Persian sources. However, the specific concept of appeal, particularly the examination of this concept in the awards issued by the Tribunal, has received less attention, which distinguishes this research.

This study examines the feasibility of appeal in arbitration awards, with a focus on certain awards of the Tribunal, analyzing the limitations faced by arbitrators. To achieve this objective, the research first presents the concept of appeal and differentiates it from annulment, before reviewing international arbitration rules such as the UNCITRAL Model Law and the regulations of the International Chamber of Commerce to provide a clearer understanding of appeals. Finally, analyses based on the awards of the Tribunal illustrate that this tribunal recognizes limited appeal possibilities in specific cases. Ultimately, it must be acknowledged that, given the increasing importance of arbitration, especially in international relations, this research can pave the way for new legal analyses and the development of legal knowledge in the field of arbitration and appeals against awards.

1. The Concept and Necessity of Appeal Against Arbitration Awards in the International Arena

This section explains the concept of appeal in international law, focusing on its role in correcting judicial errors, ensuring fairness, and upholding the rule of law. Appeals allow parties to challenge unjust decisions, promoting procedural justice and consistency in rulings. It highlights the principle of *res judicata* (finality of judgments) and provides examples from international courts, such as the International Court of Justice and the International Criminal Tribunal for the Former Yugoslavia, to illustrate how appeals rectify errors and maintain judicial integrity.

1.1. The Concept of Appeal in International Law

The philosophy behind appealing a ruling underscores the need to correct potential errors in judicial decision-making.[1] Appeals are integral to principles of fair trial and the rule of law. This process allows parties to request a review of a judgment they believe to be incorrect or unjust. The primary objective of an appeal is to ensure fairness in decision-making and rectify mistakes that may arise from misinterpretation of law, overlooking evidence, or other factors.[2]

From a functional perspective, the importance of appeals is multifaceted, including preventing judicial injustice and rectifying erroneous decisions that could lead to wrongful convictions or rulings. Appeals are also utilized to correct procedures and ensure the proper application of law. In modern legal systems, appeal processes are essential tools for correcting such errors. In other words, the right to appeal is a fundamental right for parties involved in disputes, playing a crucial role in achieving procedural justice. This process enables individuals to request higher courts to review decisions or judgments issued by lower courts. The core concept of an appeal involves challenging a decision made by a court that is deemed erroneous or flawed in its reasoning.[3]

One of the key principles in both international and domestic legal systems is the finality

1 Shavell, *The Appeals Process as a Means of Error Correction* (1995) 379.
2 Belli, Zingales, & Curzi. *Glossary of platform law and policy terms* (2021) 41.
3 Gal-Or, *The concept of appeal in international dispute settlement* (2008) 48.

of judicial decisions, which can be related to the principle of "*res judicata*."[1] This principle emphasizes that a case cannot be revisited after a final judgment has been rendered. In international law, the discussion of appeals aims to rectify judicial practices and create consistency in disparate rulings. In fact, the primary aim of appeals in both domestic and international legal systems is to foster unity in decision-making and ensure the correct implementation of laws.[2] Therefore, the appeals process is one aimed at correcting potential errors and ensuring the administration of justice, often relying on legal principles such as *res judicata* to prevent multiple lawsuits and guarantee judicial fairness.[3]

To better understand the concept of appeals in international law, we can cite examples from commercial and international cases. In the case of *Costa Rica v. Nicaragua* before the International Court of Justice (2015), we observe an appeal against the court's ruling. This case concerned border disputes and the use of the San Juan River between Costa Rica and Nicaragua. Costa Rica filed for a review of the initial ruling, and in its new judgment, the court upheld some of Costa Rica's claims.[4]

In the case of "Appeal in the Judgment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) regarding Dražen Erdemović," the ICTY convicted Erdemović, a military commander during the Bosnian War, of war crimes. Erdemović submitted an appeal against the judgment, and the court modified part of the ruling.[5]

Moreover, in cases such as "Appeals in the European Court of Human Rights," there have been requests for the reconsideration of certain judgments, as seen in the case of *Otupalík v. Czech Republic*. The court, after reviewing new evidence and arguments, amended or altered its rulings.[6]

Additionally, the International Tribunal for the Law of the Sea has also delegated the authority to review its judgments under Article 127 of its statute.

1.2. The Necessity and Significance of Appeal in Arbitration

Appeal serves as a fundamental principle of fair trial and the rule of law, acting as a guarantee for correcting potential errors within the judicial system. Despite this significance in international and domestic legal systems, the question arises: is this principle applicable in arbitration systems as well? Given that arbitration is recognized as an alternative dispute resolution (ADR) method, its nature fundamentally differs from traditional judicial systems. One of these differences is the emphasis on the finality of arbitration awards, aimed at expediting dispute resolution and reducing the time and costs associated with litigation. This finality characteristic closely resembles the principle of *res judicata* in judicial courts, which stresses the impossibility of revisiting a case after a final judgment has been rendered. However, considering the importance of justice and the need to prevent unjust or erroneous awards, we must inquire whether there exists a possibility for appeal and review of arbitration awards. Are

1 Pilkov, *Res judicata, finality and legal effect of the judgment: interrelation between concepts* (2022) 34.
2 Gal-Or, Op. Cit. (2008) 49.
3 Crick, *The Final Judgment as a Basis for Appeal* (1931) 539.
4 ICJ. Certain Activities Carried out by Nicaragua in the Border Area (*Costa Rica v. Nicaragua*) 2024. Retrieved from https://www.icj-cij.org, last accessed on October 28, 2024.
5 ICTY. *Prosecutor v. Dražen Erdemović*, Judgment on Appeal, Retrieved from https://www.icty.org, last accessed on October 28, 2024.
6 ECHR. *Otopális v. Czech Republic*, Judgment. Retrieved from https://www.echr.coe.int, last accessed on October 28, 2024.

there mechanisms in place to correct potential errors in arbitration rulings? Examining this issue and comparing it with traditional judicial systems may enhance our understanding of the role and significance of appeal in arbitration.

Appeals in arbitration, particularly in international investment arbitration, are proposed as essential elements of the arbitration system for several reasons:

1. **Inconsistencies in Awards:** One of the fundamental challenges in international arbitration is the existence of contradictions in the awards issued by different arbitration tribunals.[1] In some cases, arbitrators have rendered conflicting awards in similar cases. Therefore, an appeal process can help achieve greater coherence in arbitration awards through the consistent interpretation and application of laws.
2. **Impact on Public Policy and National Sovereignty:** Erroneous or conflicting awards in international arbitration can undermine public policy and even national sovereignty.[2] The appeal process allows for the correction of these mistakes before a ruling becomes final, thereby preventing potential negative consequences.
3. **Successful Experiences of Organizations:** The successful experiences of organizations such as the World Trade Organization (WTO) indicate that appeal processes have effectively improved predictability and increased trust in arbitration systems. This experience suggests the feasibility of implementing such mechanisms in other international arbitration systems to enhance coherence and efficiency.

Overall, in the context of international investment agreements, reopening substantive issues through the appeal process leads to improved rulings compared to simply annulment. The existence of an appeal mechanism can motivate an arbitration panel to interpret the law correctly while simultaneously providing a crucial opportunity to correct flawed awards before they become final. A flawed arbitration award poses risks to a state's national sovereignty and public policies, leading states to potentially refuse to enforce an award due to conflicts with sovereignty. However, with an appeal mechanism, the award can be amended before enforcement, maintaining public trust in investment arbitration and addressing legitimacy concerns.

The establishment of an appeal mechanism has garnered significant attention among arbitral reform proposals, as it preserves the fundamental characteristics of international investment agreements that have proven their value, while aiding in the creation of transparent and coherent judicial practices, correcting legal errors in specific cases, and ultimately restoring trust in the arbitration process. While it is true that creating an appeal mechanism is not the sole solution to the inherent flaws of the current international investment agreement regime, it is crucial to emphasize that the goal of reforms is not to transform a dispute resolution process into a perfect mechanism but to minimize abuse and clarify ambiguities in a way that enhances its legitimacy. In the current climate, where finding a suitable solution is challenging, if an appeal mechanism can somewhat alleviate the legitimacy crisis in investment arbitration, it deserves to be appropriately integrated into the current system.[3]

1 Debourg, *Les contrariétés de décisions dans l'arbitrage international* (2011).
2 Franck, *The Legitimacy Crisis in Investment Treaty Arbitration: Privatizing Publlic International Law through Inconsistent Decisions* (2004) 1558.
3 Zhang & Rozanah, *Establishing an Appeal Mechanism for Investor-State Dispute Settlement: Challenges, Feasibility, and Options* (2022) 19.

In conclusion, the ability to appeal arbitration awards is indispensable due to its role in resolving inconsistencies in rulings, improving the quality and accuracy of decisions, bolstering legitimacy and trust in the international arbitration system, and preventing harm to public policies and national sovereignty. This mechanism facilitates opportunities for correcting potential errors and enhances the coherence of legal interpretation and application, thereby contributing to improved justice in arbitration. Additionally, the successful experiences of organizations like the WTO illustrate the effectiveness of the appeal process in strengthening predictability and increasing confidence in arbitration proceedings.

2. Identifying Instances of Appeal in Arbitration Agreements and Laws

This section examines the review mechanisms for arbitration awards in international and domestic contexts, focusing on interpretation, supplementation, and correction of clerical errors as limited forms of review. It distinguishes these processes from appeals, which involve a more comprehensive reevaluation of the award. It also explores specific instances where appeals are permitted under international regulations (e.g., ICSID, ICC) and domestic laws (e.g., France, Switzerland), highlighting the rarity of appeals due to the principle of finality in arbitration. Additionally, it discusses the approach of Iranian law, which allows for annulment and correction but not traditional appeals. Finally, it considers the feasibility of including appeal provisions in arbitration agreements, noting that most rules emphasize finality, though some frameworks, like ICSID, permit appeals.

2.1. Review of Arbitration Awards

In the context of international arbitration, after the issuance of a final award, various issues may arise, such as ambiguities in the text of the award, omissions in addressing all claims raised, or technical and clerical errors within the award. To address these problems, international arbitration institutions have developed mechanisms such as *interpretation* of the award, issuance of *supplementary* awards, and *correction* of clerical errors. These mechanisms can be considered a form of limited review of the award; however, the question arises whether these reviews can be deemed a type of appeal against the arbitration award. This section will explore the differences between interpretation, supplementation, and clerical errors as forms of limited reviews and the concept of appeal to determine whether these instances are legally comparable to appeals.

2.1.1. Interpretation of the Award

The interpretation of an arbitration award, unlike an appeal, involves a limited review aimed at clarifying ambiguities in the award's text to ensure its proper implementation. Article 33 of the UNCITRAL Model Law on International Commercial Arbitration recognizes this process, allowing parties to request an interpretation within 30 days of receiving the award if certain parts require clarification. This provision plays a crucial role in preventing misinterpretation of the award and addressing potential ambiguities.[1]

In the ICSID arbitration system, the interpretation is carried out by submitting a request

1 Mirshakari & Mahtabpour, *Competent Authority for the Interpretation of Arbitral Awards* (2020) 591-607.

to the Secretary-General of the center, and an interpretative award is issued by the arbitration authority. This interpretation is binding as part of the original award and is valid for both parties. Additionally, Article 35 of the International Chamber of Commerce (ICC) Arbitration Rules provides for the possibility of interpreting the award under specific conditions, including the requirement for a written request within 30 days of the award's issuance. The goal of this process is solely to clarify ambiguities and explain the text of the award, rather than to modify or correct its content. As a result, the interpretation of an arbitration award is limited to clarifying meanings and ambiguous concepts and, unlike an appeal, should not lead to changes or modifications in the substance of the award.[1] This process is carried out within the framework of the rules of institutions such as UNCITRAL and the ICC to prevent the emergence of new disputes and ensure accurate execution of the award.

2.1.2. Supplementation of the Award

According to paragraph three of Article 33 of the UNCITRAL Model Law on International Commercial Arbitration, if there are omissions or failure to address certain claims in the arbitration award, parties may request the issuance of a supplementary award. Under this provision, either party may, within 30 days of receiving the award and with notice to the other party, ask the arbitration tribunal to issue a supplementary award regarding claims not addressed in the final award. If the tribunal finds the request justified, it must issue the supplementary award within 60 days. This process allows for the correction of deficiencies in the award without the need to resort to court, thereby enhancing the efficiency of the arbitration process.[2] A similar procedure for issuing supplementary awards exists in the ICSID system. According to paragraph two of Article 49 of the ICSID Convention, if part of the claims raised during the arbitration has not been considered in the final award, either party may request a supplementary award.[3]

In the ICC Arbitration Rules, there is also a provision for requesting a supplementary award. According to paragraph three of Article 36 of the ICC Rules, either party may request a supplementary award after receiving the final award, within a maximum of 30 days. This request must pertain to claims raised during the arbitration that were not addressed in the final award.

In summary, a supplementary award in arbitration is a type of limited review issued to address deficiencies or shortcomings in the final award,[4] and it differs from the concept of appeal. A supplementary award addresses claims raised during the arbitration process that were overlooked in the final ruling without reviewing or revising the content and rationale of the preceding award. In contrast, an appeal generally involves a comprehensive review of the case and the issued award, which may lead to complete or partial changes to the initial award and reassessment of the legal or factual grounds of the award. Therefore, a supplementary award is issued solely to complete the previous award and resolve outstanding claims without delving into a general review of the award and its reasoning.

1 Fry, Greenberg, Mazza, & Moss, *The Secretariat's guide to ICC arbitration: a practical commentary on the 2012 ICC Rules of Arbitration from the Secretariat of the ICC International Court of Arbitration* (2012) 349.

2 Hill, *claims that an arbitral tribunal failed to deal with an issue: the setting aside of awards under the Arbitration Act 1996 and the UNCITRAL Model Law on International Commercial Arbitration* (2018) 385.

3 ICSID, *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (1966).

4 Gusy, Hosking, & Schwarz. *A guide to the ICDR International Arbitration Rules* (2011) 295.

2.1.3. Correction of Clerical Errors

The correction of clerical errors in arbitration refers to typographical, numerical, technical, or computational mistakes that occur in the text of the arbitration award and can be amended without altering the essence of the award. In the UNCITRAL Model Law on International Commercial Arbitration, according to paragraph one of Article 33, the arbitration tribunal may correct minor errors, including clerical mistakes, at the request of one of the parties or by the tribunal's discretion. Similarly, the ICSID Convention, in paragraph two of Article 49, states that the arbitral tribunal is authorized to rectify clerical, arithmetical, or similar errors in the award. The ICC Arbitration Rules also mention the correction of such errors in Article 36, indicating that unintentional mistakes can be rectified after the issuance of the award.

It is important to note that the correction of clerical errors, as a form of technical and limited review, fundamentally differs from an appeal. While an appeal involves a reevaluation of the legal and substantive grounds of the award and the potential for significant changes, the correction of clerical errors merely addresses typographical or technical mistakes without altering the main content of the award.[1]

2.2. Specific Instances of Appeal Based on Laws

2.2.1. Appeal in International Regulations

Article 51 of the Convention on the Settlement of Investment Disputes states that if an arbitration award has been issued by the Center, one way to seek a review is that either party may request an appeal. Here, the appeal is based on the discovery and identification of new facts that were previously undiscovered and may directly affect the final decision of the award. This article also specifies that the request for appeal must be addressed to the Secretary-General of the Center, providing reasons that demonstrate how this new information could reveal significant facts that might impact the final award. This provision applies to situations where new information could substantially affect the ruling, especially when errors related to fact-finding arise from the negligence or oversight of one of the parties. Consequently, this article serves as a guarantee for the parties that, in the event of new information or evidence that could significantly influence the outcome of the award, there exists the possibility of seeking an appeal, thereby enhancing fairness and justice in the arbitration process.[2]

Another example of the possibility of appealing an arbitration award can be found in the regulations of the Paris International Court of Arbitration. Established in 1923 as a non-governmental, non-profit organization for resolving disputes in the agricultural sector, the Paris ICC Court of Arbitration now handles domestic and international commercial disputes. According to the arbitration regulations of this organization, as detailed in Annex (2), a two-stage review process is available. This type of review occurs only if the parties agree to it before initiating or during the referral of the dispute. In the first stage, the arbitration tribunal issues a conditional award. After the award is issued, each party has 15 days to submit a request for the second stage of review to the organization. If no request is made within this period or if the fees for the second stage are not paid, the conditional award becomes final and binding. In the

1 Hill, Op. Cit. (2018) 385.

2 Oloumi Yazdi, *The Jurisdiction of Arbitration Authorities for Appeal: A Re-examination of the Iran-U.S. Claims Tribunal Practice* (2012) 109.

second stage, the case is reviewed by a separate arbitration tribunal, with members appointed by the President of the Arbitration Chamber, although parties may request that a different arbitrator replace one of the members.[1]

In the third example, the "Grain and Feed Trade Association" also provides for the possibility of appealing an arbitration award in its "Arbitration Rules." According to Article 10 of these rules, either party to the dispute may submit an appeal request to the Association within a maximum of 30 days after the issuance of the arbitration award. Article 10 specifies that, except in the cases expressly stated in this law, either party may appeal the arbitration award to a review board, provided that the following conditions are met:

- **a.** No later than 12 PM on the thirtieth day from the date of the award:
    1. Ensure that written notice of the appeal has been received by the Grain and Feed Trade Association,
    2. The notice of intent to appeal must be communicated to the other party, and a copy sent to the Grain and Feed Trade Association,
    3. Ensure that the Grain and Feed Trade Association has received the specified funds for the appeal deposit as stated in the arbitration award, cleanly and without issues.

Otherwise, the right to appeal will be forfeited.

Moreover, paragraph two of Article 10 states that if both parties submit requests for appeal against the ruling, the Grain and Feed Trade Association has the discretion to consolidate these requests for examination by a single review board. In this case, a "Review Board" is formed, consisting of three members if the initial arbitration was conducted by a single arbitrator, or five members if it was conducted by a three-arbitrator panel. This board re-examines the case and may amend, supplement, or completely change the award. Nonetheless, the ruling of the review board is final and enforceable.[2]

In the case of *Sharp Corp Ltd v. Viterra BV*, the UK Supreme Court examined the appropriate criteria for determining damages under the default clause of the Grain and Feed Trade Association and reaffirmed the interpretation of Section 69 of the Arbitration Act 1996. In this case, the dispute was initially heard in arbitration by the Grain and Feed Trade Association and was later referred to the Supreme Court due to a legal issue under Section 69 of the Arbitration Act 1996. This example illustrates the possibility of appealing an arbitration award to national courts under specific conditions.[3]

2.2.1. Appeal in the Domestic Laws of Certain Countries

The possibility of appealing arbitration awards is recognized in the domestic laws of some countries. For instance, in French arbitration law, there are specific circumstances under which an appeal can be requested. These circumstances primarily relate to general principles of law and the preservation of public order.[4] Before the amendment of arbitration regulations in 2011, domestic arbitration awards in France could be appealed unless the parties explicitly waived the

1 Shiravi, *International Commercial Arbitration* (2023) 287.
2 Ibid, 288.
3 Messer & Wickham, *The GAFTA Default Clause and the Scope of Arbitration Appeals* (2024).
4 de Boisséson, *French international arbitration law. In International Commercial Arbitration* (1990) 45.

right to appeal. Typically, parties would remove this right in arbitration agreements. According to Article 1489 of the French Code of Civil Procedure, domestic arbitration awards are not subject to appeal unless an agreement exists between the parties. The appeal process in these cases is similar to that of court judgments and involves a comprehensive review both procedurally and substantively. However, it is noteworthy that, regarding international arbitration awards, Article 1518 of the same Code states that there is no possibility for appeal.[1] This indicates that the French legal system distinguishes between domestic and international arbitration, allowing for specific conditions under which domestic awards can be appealed, while such a possibility is not available for international awards.

In Switzerland, arbitration awards are subject to appeal under specific domestic laws, but in a manner distinct from French law. One significant feature of Swiss arbitration is that, in addition to the possibility of appealing the award, parties may also request corrections or clarifications regarding the arbitration award. According to Article 189 of the Swiss International Arbitration Act, parties can request the arbitration panel to correct or provide an interpretation of the award. This option is often used as a method to resolve minor disputes regarding the meaning or implementation of the award. The correction mentioned in this article can be seen as a form of limited appeal, as it appears to address substantive aspects; the Swiss Federal Court, serving as the primary authority for reviewing challenges to arbitration awards, has very limited jurisdiction to intervene. This court focuses not on the substantive issues but rather on the legal principles and compliance with procedural requirements during arbitration. In other words, the Swiss Federal Court does not revisit the substantive or legal grounds on which the arbitrators based their decisions but instead examines whether the arbitration laws and the rights of the parties were upheld. Additionally, Swiss law allows parties to exclude or limit the right to appeal and seek minor corrections (clarifications) in their arbitration agreements. This is particularly common in international commercial arbitration, where parties often prefer a final award without the possibility of appeal to avoid prolonging the process.[2]

It is observed that appeals in arbitration are treated as exceptions rather than rules. This inference is especially drawn from research emphasizing the finality and conclusiveness of arbitration awards.[3] Generally, arbitration is recognized as an independent and alternative method for dispute resolution due to its speed and cost-effectiveness. The principle of finality of arbitration awards, akin to the principle of *res judicata* in judicial courts, renders arbitration awards non-appealable, except under specific and exceptional circumstances.

2.3. The Approach of Iranian Law Regarding Appeals from Arbitration Awards

Iranian law addresses domestic and international commercial arbitration through two different legal frameworks. For domestic arbitration, the Code of Civil Procedure (Chapter Seven: on Arbitration, Adopted on December 24, 2000).) from Articles 454 to 501, addresses this topic. This law does not mention appeals from arbitration awards; however, Article 489 states that arbitration

1 Noori Youshanlouei & Qasemi, *A Comparative Study of Grounds for Annulment of Arbitral Awards in Iranian and French Law* (2022) 153.
2 Kaufmann-Kohler & Rigozzi, *International arbitration: law and practice in Switzerland* (2015).
3 Kirby, *Finality and arbitral rules: saying an award is final does not necessarily make it so* (2012) 109; Ojiako, *The finality principle in arbitration: A historical exploration* (2023).

awards can be annulled in seven specific cases, rendering them unenforceable. It also indicates that arbitration awards may be challenged in a competent court within 20 days of the notification of the award, as per Article 490.[1] Article 487 refers to the correction of arbitration awards within the limits of Article 309 of the Code of Civil Procedure, which can be interpreted as a form of appeal in domestic arbitration awards.[2]

In the Law on International Commercial Arbitration (LICA) enacted in 1997, Articles 33 and 34 refer to the annulment of awards, stating that arbitration awards can be annulled in Iranian courts for the reasons specified in these two articles. However, Article 32 of the same law addresses the correction, interpretation, and supplementary awards according to customary practices and current international procedures. It allows arbitrators or the arbitration panel to correct any mistakes in calculations, writing, or similar errors in the award, or to issue a supplementary award in cases where issues have been left unaddressed.

In conclusion, it can be observed that the concept of appeal in its specific sense is not provided for in the Iranian Code of Civil Procedure or the LICA. Instead, appeals are mentioned in a broader sense in the specified articles above.

2.4. Feasibility of Including Appeal Provisions in Arbitration Agreements

An arbitration agreement is a contract in which parties commit to refer their current or potential disputes to the examination and opinion of individuals other than official judicial authorities. In an arbitration agreement, arbitrators may be appointed, or it may simply state that the dispute will be referred to one or more individuals for arbitration.[3] In most arbitration agreements and the rules to which they refer, the possibility of appealing an arbitration award is not provided, except for cases such as correction, interpretation, and supplementation of the award. In the vast majority of arbitration rules, whether ad hoc or institutional, it is emphasized that arbitration awards are final and non-appealable.

For example, Article 34(2) of the UNCITRAL Arbitration Rules states, " All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay." Similarly, Article 35(6) of the ICC Arbitration Rules provides that by agreeing to the ICC's arbitration rules, the parties waive any right to request an appeal or objection to the award.

On the other hand, the ICSID Convention explicitly provides for the possibility of appealing an arbitration award in Article 51.[4] The feasibility of appealing an arbitration award largely depends on the rules of the arbitration organization utilized. Some arbitration rules, like the UNCITRAL rules for ad hoc arbitration, emphasize that the arbitration award is final and non-appealable.[5] In contrast, other rules, such as those of the ICSID Convention, explicitly allow for appeals. This difference indicates that arbitration settings depend on the structure and objectives of the relevant organization, and parties should carefully examine these aspects before agreeing on arbitration rules.

1 Kakavand, *Arbitration Law in the Awards of Judges and Arbitrators* (2020) 504-506.
2 Khodabakhshi, *Arbitration Law and Related Disputes in Judicial Practice* (2019) 413-414.
3 Nevisandeh, *The nature of arbitration agreement* (2016) 314.
4 Shiravi, Op. Cit. (2023) 284.
5 Kirby, Op. Cit. (2012).

In ad hoc arbitration, the rules are specifically determined by the parties and largely reflect a high degree of autonomy in arbitration. This flexibility and autonomy can provide grounds for appeal in such agreements.[1] In ad hoc arbitration, parties often choose specific rules and procedures for resolving their disputes. If one party feels that the established procedures have been unfair or that the arbitrators have decided with bias or a lack of neutrality, they may seek to appeal. Additionally, ad hoc arbitration may yield unpredictable outcomes due to the absence of formal frameworks. Parties may wish to create a mechanism for appeal to allow for a review of decisions in the event of dissatisfaction with the initial arbitration outcome. This is particularly important in complex cases involving significant interests.

Ultimately, one of the main features of ad hoc arbitration is that parties can change the terms of the arbitration agreement at any stage of the arbitration process by mutual agreement. Therefore, after the issuance of the initial award, parties may agree to revisit or appeal the arbitration process based on their mutual interests or changes in contractual conditions.

3. Identifying the Concept of Appeal in the Rulings of the Iran-U.S. Claims Tribunal.

The Iran-U.S. Claims Tribunal is a unique arbitration body established under the Algiers Accords to resolve disputes between the two countries.[2] A fundamental question regarding this tribunal is whether there exists the possibility of appealing its issued awards. In other words, does this tribunal view appeal as a mechanism for reviewing a decision, or does it refer to a specific reevaluation of the entirety of the award and its underlying reasons? To answer these questions, it is essential to first examine the legal framework under which the Tribunal operates and the principles and rules it follows. Understanding these will provide better insight into the role of appeal within this tribunal and clarify potential differences from similar international arbitration systems.

3.1. Instances of Appeal in Issued Awards

In the partial ruling of case 601,[3] Iran submitted a request for appeal or review to the Tribunal, indicating that it wished to have its award reconsidered. The Tribunal concluded that appeals against arbitration awards are acceptable only when both parties mutually agree to it or when the Tribunal possesses inherent authority to do so. Otherwise, appeals are not permissible. The tribunal referenced several precedents and regulations, including:

1. **Ram International Industries Case:** In this instance, the Iranian Air Force requested that the Tribunal reconsider the initial ruling due to alleged forgery and false testimony presented during the case. The tribunal initially ruled in favor of the claimant and required the Iranian Air Force to pay substantial damages. After the initial award, Iran requested a review based on the discovery of new documents, claiming that false

1 Tesfay, *The Normative Basis for Decision on the Merits and Procedural Conduct of Arbitration: The Extent of Party Autonomy*: *International Commercial Arbitration: Legal and Institutional Infrastructure in Ethiopia* (2021): 93; Ashford, *The IBA Rules on the Taking of Evidence in International Arbitration: A Guide* (2013) 27.

2 Eftekhari Jahromi, *The Iran-U.S. Claims Tribunal and Its Function in International Law* (1993) 1; Mohebi, *The Legal Nature of the Iran-U.S. Claims Tribunal from the Perspective of International Law* (1994) 95–144.

3 *Partial Award No. 604-A (2:A)/ A26/ (4)/ B43 of the General Assembly of the Iran-U.S. Claims Tribunal.*

evidence and testimonies had influenced the outcome.[1] Ultimately, the Tribunal determined that it had the inherent authority to reconsider decisions made under fraudulent conditions, given the necessity to resolve a significant number of cases before its dissolution.[2]

2. **Harold Burnham Case:** In this case, Iran petitioned the Tribunal to review its initial ruling after the Tribunal ruled in favor of Burnham, mandating Iran to pay considerable damages. Following the initial ruling, Iran presented new evidence, arguing that it demonstrated false testimony or significant errors in the initial proceedings that could alter the Tribunal's conclusions.[3] The Tribunal noted that the finality and enforceability of a ruling do not necessarily preclude the possibility of appeal. However, the explicit rules stating the "final and enforceable" nature of the award, coupled with the silence of the contracting parties regarding the possibility of appeal, complicated the conclusion that there is inherent authority for appeal in the awards.[4]

From the review of appeal practices within the Tribunal, it can be concluded that the principle of "finality and enforceability" of arbitration awards generally prevents the acceptance of appeals, except in specific cases where either the parties have mutually agreed to allow for appeals or the Tribunal has inherent authority to review decisions due to fraud or the submission of incorrect evidence. The cases of *Ram International Industries* and *Harold Burnham* illustrate that although the primary rule emphasizes the finality of the award, the tribunal may consider the possibility of appeal in exceptional cases based on specific conditions and its inherent authority.

However, a new question arises regarding the origin of this inherent authority, which will be explored further.

3.2. Identifying Appeal in the Arbitration Rules of the Tribunal

This section examines the rulings of the Tribunal under the Algiers Accords, highlighting the finality of its awards with limited exceptions for interpretation, error correction, and supplementary awards. While full appeals are not standard, the Tribunal may allow appeals in exceptional cases, such as when new evidence significantly impacts the ruling. This reflects a balance between finality and fairness, guided by international principles like those in the UNCITRAL and ICSID frameworks.

3.2.1. Current Arbitration Rules in the Tribunal

The section concerning the current arbitration rules in the Tribunal is examined based on the hypothesis that this tribunal adheres to a diverse set of international rules and laws tailored to the subject matter and type of disputes it addresses. This is reflected in Article 5 of the Algiers Accords.[5] Such diversity in applicable laws may significantly impact arbitration practices, particularly concerning the possibility of appeal.

1 IUSCT Case No. 67-148-1, *RAM International Industries, Inc. v. The Air Force of the Islamic Republic of Iran* (1983).
2 Ibid, 20.
3 IUSCT Case No. 967. *Harold Birnbaum v. The Islamic Republic of Iran* (1993).
4 Ibid, 20.
5 Dilmaqani Zadeh, Zargar, & Keyhanlou, *The Role of Arbitration in the Legal System of Iran and the United States with Emphasis on Domestic Laws* (2020) 2806.

Given this hypothesis, we should not assume the absence of an appeal mechanism in the Tribunal's awards as a default position. Instead, a thorough examination of the governing laws of the tribunal is necessary to assess the feasibility of appeal. Understanding the rules and principles under which the Tribunal operates allows for a more precise evaluation of whether appeals can be limited and permitted under specific conditions.

The governing law of the Tribunal, based on the Algiers Accords, includes three main components for determining applicable law:

1. **Respect for International Law:** The Tribunal is obligated to adhere to international principles and laws, including customary trade practices and principles of commercial law, and to utilize these sources in its decision-making.
2. **Rules for the Choice of Law:** These rules encompass conflict-of-laws principles that the Tribunal must apply while considering the circumstances of the contract and any changes in conditions. This means applying the laws that have the closest connection to the subject matter in dispute.
3. **Substantive Legal Principles:** The tribunal refers to principles such as good faith and respect for contractual obligations. In cases where the parties have not chosen a specific law, the Tribunal applies general legal principles as the governing law.[1]

With this understanding of the governing laws of the Tribunal, we can explore how the concept of appeal can be inferred from these laws and whether the term "appeal" signifies a mere review or a more specific reevaluation.

3.2.2. Inference of Appeal from the Governing Laws of the Tribunal

According to paragraph 1 of Article 4 of the Dispute Resolution Declaration, all decisions and awards of the arbitration panel are final and enforceable. This principle is reaffirmed in paragraph 2 of Article 32 of the Tribunal's rules, which emphasizes the binding nature of the awards for the parties involved. However, the Tribunal's rules, specifically Articles 25, 26, and 37, provide limited exceptions to this principle. Under these exceptions, the Tribunal has the authority to interpret its awards (Article 25), correct arithmetical, drafting, or clerical errors (Article 26), and issue supplementary awards in cases where certain claims were raised during arbitration but not addressed in the final ruling (Article 37).[2]

These provisions indicate that the Tribunal recognizes a limited form of review, akin to that seen in international judicial systems, but this review does not extend to a re-evaluation of the substantive content of the award or decisions. In other words, these exceptions are designed to ensure clarity and correctness in the enforcement of the award without granting the possibility of a full challenge or appeal to the parties.

Regarding the specific notion of appeal, paragraph 2 of Article 3 of the Dispute Resolution Declaration stipulates that "the activities of the tribunal shall be conducted in accordance with the UNCITRAL Arbitration Rules on International Commercial Law, unless modified by the parties or the tribunal to ensure the implementation of this declaration."[3] Thus, the UNCITRAL

1 Noori & Darayi, *The Governing Law of the Iran-U.S. Claims Tribunal* (2019) 98.
2 Maroosi, *Report on the Awards of the Iran-U.S. Claims Tribunal* (2023) 21.
3 Ibid., *Vol 2,* 10.

Arbitration Rules, as applicable on January 19, 1976, will govern the Tribunal's decisions and proceedings, except to the extent modified by the contracting state of the Dispute Resolution Declaration or by the Tribunal itself.[1] Therefore, based on the UNCITRAL rules, appeals are not accepted.

However, paragraph 1 of Article 1 of the Tribunal's rules states, "Within the framework of the Algiers Accords, the submission of claims to the Tribunal and the manner of their proceedings shall be governed by the following rules, which may be modified by the Tribunal or the contracting states." This condition aligns with paragraph 2 of Article 3 of the Dispute Resolution Declaration. Therefore, it is necessary to examine whether the tribunal has made any modifications regarding the limitations on appeals within the UNCITRAL rules.

In contemporary dispute resolution treaties effective at the time of the issuance of the Algiers Accords, such as the ICSID Convention, the right to appeal final and enforceable awards is explicitly provided. Additionally, the Hague Convention of 1899 on the Peaceful Settlement of International Disputes, to which both Iran and the United States have been parties since September 4, 1899, explicitly reserves the right for parties to request an appeal in their arbitration agreement.[2]

The Tribunal has also examined the inherent powers of international courts and tribunals, recognizing a general principle that international arbitration bodies possess certain inherent capabilities despite the absence of explicit provisions. These inherent powers refer to capacities that, although not formally delegated to the tribunals, should be considered part of the common intent of the parties to establish an independent and credible judicial entity. Specifically, international courts have the responsibility to ensure the fulfillment of their duties, which includes matters that may not be explicitly mentioned within their powers. For instance, the Tribunal has acknowledged that "there exists a potential authority to issue orders, if necessary, to protect the rights related to the parties and ensure full compliance with principles of due process."[3]

In summary, based on the inference from the governing laws and the cases reviewed in the Tribunal, the possibility of appeal is permitted only under specific conditions and based on newly discovered evidence that was previously unknown. This appeal is contingent upon the discovery of new facts or circumstances that significantly impact the initial ruling.[4] In other words, while appeal in the decisions and awards of international arbitration tribunals is generally not accepted as a standard rule, it is acknowledged in exceptional cases and is limited in existing practices. The need for an appeal mechanism has led many drafters of arbitration rules to conclude that the conditions and possibilities for appeal should be clearly defined in their laws. In contexts where direct reference to the jurisdiction for appeal has not been made, arbitration bodies typically rely on their inherent authority to reserve that right for themselves.[5]

1 *Partial Award No. 604,* 22.
2 The Hague Conventions of 1899, paragraph 1 of article 55.
3 Friedland, & Martinez, *The UNCITRAL Arbitration Rules: A Commentary* (2007): 519; *Partial Award No. 604,* 22.
4 *Partial Award No. 604,* 25.
5 Oloumi Yazdi, *The Jurisdiction of Arbitration Authorities for Appeal: A Re-examination of the Iran-U.S. Claims Tribunal Practice* (2012) 118.

Therefore, appeal in awards typically occurs when clear legal errors have been made or the arbitration process has been disrupted, and the Tribunal does not accept appeal as a general rule.

Conclusion

Based on the discussions presented above regarding the feasibility and limitations of appeals in arbitration awards, with a focus on the Iran-U.S. Claims Tribunal (the IUSCT), it can be concluded that the fundamental principle within the arbitration system is the finality and binding nature of the issued awards. This characteristic positions arbitration as a swift and effective method for resolving disputes in the realm of international commercial law.

However, in the context of the IUSCT, as a specialized entity, there exist conditions under which appeals are permissible, thereby somewhat moderating this principle of finality. The present study indicates that the tribunal, grounded in the Algiers Accords and certain principles of international arbitration, recognizes the possibility of appeal in specific circumstances, such as instances of fraud or the discovery of new evidence. Nonetheless, this potential for appeal is limited and contingent upon specific conditions, as the tribunal generally seeks to maintain the certainty and finality of its awards.

Thus, the concept of appeal within this tribunal primarily pertains to a limited review and correction of procedural and technical errors, distancing itself from the notion of appeal as a comprehensive reevaluation or substantial alteration of the ruling. Ultimately, the findings of this study suggest that the IUSCT, despite the acceptance of limited appeals, may engage in the reassessment of awards in certain exceptional cases. This could serve as a model for balancing the finality of arbitration awards with the necessity of ensuring justice within international arbitration practices.

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