Iranian Journal of International and Comparative Law
Volume 2, Issue 2, 2024

Resignation of Arbitrators and Its Examination in the Practice of the Iran-U.S. Claims Tribunal

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Article Info

Article type:
Research Article

Article history:
Received
7 December 2024

Received in revised form
25 December 2024

Accepted
31 December 2024

Published online
31 December 2024

https://ijicl.qom.ac.ir/article_3428.html

Keywords:
Arbitrator Resignation,
Iran-U.S. Claims Tribunal,
Truncated Tribunal,
Substitute Arbitrator,
Mosk Rule.

ABSTRACT

The resignation of an arbitrator constitutes one of the grounds for the termination of an arbitrator's mandate, as provided for in most national arbitration laws and institutional arbitration rules. However, the legal dimensions and implications of such resignation- including its effects on the parties' rights and the arbitral proceedings- may vary depending on the arbitrator's motives for resigning and the justifiability (or lack thereof) of those motives. For instance, the acceptance of a resignation, the method of appointing a substitute arbitrator, the possibility of continuing proceedings before a truncated tribunal (i.e., without replacing the resigning arbitrator), and even the arbitrator's potential civil liability may be subject to differing legal determinations based on whether the resignation is deemed justified. Domestic and international arbitration laws and rules have addressed arbitrator resignations through divergent approaches, often focusing solely on the replacement of the arbitrator while neglecting broader legal and ethical challenges. These challenges include the permissibility of resignation, its acceptance, its impact on the continuation of proceedings, and the prevention of its abuse. The unique characteristics of the Iran-U.S. Claims Tribunal have rendered the issue of arbitrator resignation particularly significant within its framework. Notable in this regard are the Tribunal's jurisprudence and its modifications to the UNCITRAL Arbitration Rules- aimed at mitigating procedural delays arising from resignations. One of the most consequential procedural rules derived from the Tribunal's experience is the addition of Paragraph 5 to Article 13 of the UNCITRAL Rules, which imposes an obligation on the resigning arbitrator to continue participating in proceedings (post-resignation) in cases where they have already taken part in the merits hearing. This provision, known as the Mosk Rule, has introduced a distinctive mechanism to safeguard procedural integrity. This article examines the rationale behind the Mosk Rule, its legal effects in light of general principles governing arbitrator resignation and replacement, its implications on the parties' rights, the imperative of ensuring fair and equitable proceedings, and the preservation of arbitration's legitimacy and credibility. Furthermore, the study proposes measures to deter unjustified resignations and mitigate their adverse impact on arbitral proceedings.

Cite this article: Oloumi Yazdi, H.R., (2024). Resignation of Arbitrators and Its Examination in the Practice of the Iran-U.S. Claims Tribunal, *Iranian Journal of International and Comparative Law*, 2(2), pp: 115-129.

10.22091/ijicl.2025.12731.1151
Publisher: University of Qom

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Introduction

The resignation of an arbitrator, as one of the grounds for terminating an arbitrator's mandate, is recognized in most national arbitration laws and institutional arbitration rules. However, issues such as the permissibility of resignation, the authority competent to accept it, its impact on the parties' rights and the arbitral process, the motives behind the resignation, and the consequences of its justification (or lack thereof) on the arbitrator's liability have received scant attention in arbitration legislation and rules. This article begins by surveying select domestic and international arbitration laws and rules governing arbitrator resignation. It then examines the legal challenges arising from resignation, followed by an analysis of the Iran-U.S. Claims Tribunal's distinctive approach to resignation, contextualized within the Tribunal's unique procedural framework.

1. Arbitrator Resignation in Arbitration Laws and Rules

Acceptance of an arbitral appointment implies a commitment to continue participation in the proceedings through to their conclusion. Some scholars argue that this acceptance inherently precludes unilateral abandonment- i.e., resignation or refusal to perform arbitral duties.[1] Typically, in their declaration of acceptance, arbitrators affirm their availability and readiness to serve, which logically and customarily entails their continued participation until the issuance of the award.[2]

Conversely, others frame resignation as an inherent human right, contending that, as no individual may be compelled to perform a task against their will, arbitrators- like any other adjudicators- retain the right to resign. Where justified grounds exist, they cannot be barred from resigning or forced to continue. Indeed, in cases where the legitimacy and integrity of the arbitration are imperiled, resignation may transition from a *right* to a *duty*.[3]

Beyond the arbitrator's personal rights and obligations, the parties' entitlements demand consideration. By opting for arbitration as their dispute resolution mechanism and selecting specific arbitrators, parties are entitled to a *fair and equitable process*, culminating in a final and enforceable award without undue delay. Pursuant to the universally recognized legal principle

1 Levine J, 'Ethical Dimensions of Arbitrator Resignations' (2019) 10 Ethics in International Courts and Tribunals 292.

2 International Bar Association, *Rules for International Arbitrators*, Rule 1 (1987).

3 American Arbitration Association, *Code of Ethics for Arbitrators in Commercial Disputes* (March 2004).

of *abuse of rights*, no party- or arbitrator- may exercise their rights to the detriment of others. Thus, arbitrators must not exploit their right to resign in a manner prejudicial to the parties.

Reflecting this balance, certain arbitral codes of conduct distinguish between *justified resignations* (e.g., due to illness or relocation) and *resignations tainted by bad faith* (e.g., attempts to delay proceedings or influence the outcome). Arbitrators are expressly barred from resigning for improper motives.[1]

1.1. Arbitrator Resignation in Iranian Arbitration Laws and Rules

Most national laws and arbitration rules do not explicitly regulate the conditions for resignation, its acceptance, or its effects, focusing instead on the *appointment of substitute arbitrators* (e.g., the UNCITRAL Model Law, Iran's Law on International Commercial Arbitration, and the Arbitration Rules of the Tehran Regional Arbitration Centre). In contrast, Iran's *Code of Civil Procedure* addresses resignation in greater detail.

Article 473 of the Code provides: *"If an arbitrator, after accepting the appointment, fails to attend hearings, resigns without justified cause (e.g., travel, illness), or refuses to render an award, they shall be liable for damages and barred from serving as an arbitrator for five years."*

Article 474 further stipulates that in court-referred arbitrations, the resignation, absence from two consecutive hearings, or refusal to deliberate by one arbitrator does not impede the remaining two arbitrators from proceeding with the case and issuing an award. In arbitration parlance, the law permits a *truncated tribunal* (a two-member panel) to continue the proceedings. If the two arbitrators disagree, the court shall appoint a third arbitrator by lot within ten days, unless the parties jointly nominate one earlier. The arbitral timeline recommences upon the new arbitrator's acceptance.

Additionally, Article 501 of the Code imposes civil liability on arbitrators for *fault in the performance of their duties*, requiring compensation for material losses suffered by the parties. An unjustified resignation motivated by bad faith would arguably constitute such fault.

1.2. Arbitrator Resignation in the English Arbitration Act 1996

Article 25 of the English Arbitration Act 1996 deals with the resignation of arbitrators and its effects on the rights and responsibilities of the resigning arbitrator and the parties towards each other. This article has a new amendment that came into force on 25 March 2025. This section had stipulated that the parties could agree regarding the effects of the arbitrator's resignation concerning the arbitrator's entitlement to fees and expenses [25(1)(a)] as well as the arbitrator's liabilities arising from it [25(1)(b)]. In the recent amendment, the possibility of agreement on the arbitrator's liabilities arising from resignation has been removed from this article. The article further provides that if there is no such agreement between the arbitrator and the parties, the following rules shall apply. These rules according to the new 2025 amendment are as follows:

25(3): If an arbitrator resigns, any interested person (by giving notice to other interested persons) may request the court to issue such order as it deems appropriate regarding

1 Ibid.

what the arbitrator is entitled to in terms of fees and expenses (if any) or to claim the refund of fees and expenses already paid.

25(4): For the purpose of paragraph 3 above, each of the parties and the arbitrator shall be considered an interested person.

With the same approach, the title of article 25 of the Act (Resignation of Arbitrator: Entitlement to Fees and Expenses) has been determined. In article 29 of the same Act, paragraph 4 has been added regarding liability arising from the arbitrator's resignation as follows:

29(4): The resignation of an arbitrator shall not result in liability unless it is proven that the resignation was unreasonable in all circumstances.

29(5): Paragraph 4 above is subject to:

a: The agreement between the arbitrator and the parties mentioned in paragraph 1 of article 25,

b: An order issued by the court in accordance with paragraph 3 of Section 25.

As can be seen, this law presumes the arbitrator's right to resign and only addresses its financial effects and the arbitrator's liability towards the parties.[1]

1.3. Arbitrator Resignation in ICSID Arbitration Rules

The ICSID Arbitration Rules address the issue of arbitrator resignation from a different perspective, namely discussing the authority to approve the resignation, how to select a substitute arbitrator, and the impact of resignation on the continuation of proceedings. Given the characteristics of investment arbitrations where one party is often a host state, the rules' attention to these matters is understandable and justifiable. It is quite possible that an arbitrator appointed by a state party might consider that submitting their resignation to the appointing state would be sufficient to relieve themselves of responsibility, or that resignation might be abused as a tool to influence the process, the composition of the tribunal, or the legitimacy of the arbitration. Article 25 of the ICSID Arbitration Rules provides as follows:

Article 25:

25(1): An arbitrator may resign by notifying the Secretary-General, provided that reasons exist.

25(2): If the resigning arbitrator is a party-appointed arbitrator, the other members of the tribunal shall promptly inform the Secretary-General whether they agree to the resignation so that Rule 26(3)(a) can be implemented.

Article 26:

26(1): The Secretary-General shall notify the parties of the vacancy created in the tribunal.

26(2): The proceedings shall be suspended from the time the vacancy is announced until it is filled.

26(3): Filling any vacancy shall be done in the same manner as the initial appointment of each member, unless the President of the tribunal fills the vacancy from the Panel of Arbitrators:

1 'Arbitrator Resignations: The Law Commission's Proposed Reforms' (2024) 40(1) *Arbitration International* 67.

a: A vacancy created by the resignation of a party-appointed arbitrator without the consent of other tribunal members.

b: A vacancy that remains unfilled within 45 days of the vacancy notice.

26(4): After the vacancy is filled, the proceedings shall continue from where they were suspended. Any part of the hearing shall be repeated if the new member considers it necessary for deciding the matters under consideration.[1]

2. Identification and Analysis of Legal Issues Related to Arbitrators Resignation

As observed, arbitrator resignation may raise significant issues and considerations, while each of the examined laws and rules addressing only some of its certain aspects. An inductive list of these issues is as follows: Does an arbitrator fundamentally have the right to resign? Which authority receives and accepts the resignation, and how and when does it become effective? What are the effects of resignation on the arbitrator's professional, ethical, and civil liability? What are the consequences of resignation on the arbitral proceedings, particularly when it prolongs or necessitates the repetition of hearings? Can an incomplete tribunal, namely truncated tribunal, proceed with the case following a resignation? What are the differences in approach between ad hoc and institutional arbitration regarding resignation?

2.1. The Existence of the Right to Resign for Arbitrators

Considering all factors, arbitrators have the right to resign at any stage of the proceedings. No arbitration laws or rules prohibit arbitrators from resigning, though ethical guidelines discourage resignation without valid reasons, such as illness or incapacity.[2] There is no distinction between ad hoc and institutional arbitration in this regard, as arbitral institutions typically focus on the method of appointing a substitute arbitrator in case of resignation rather than addressing the permissibility of resignation itself.

However, the effects of resignation must be examined when the parties have agreed to appoint spec ific individuals as arbitrators, and those individuals resign. In such cases, if the parties do not agree on substitute arbitrators, or if the arbitration agreement and concomitant circumstances do not imply the conservation of the arbitration clause or the possibility of appointing new arbitrators by the parties or a designated appointing authority, the arbitration clause becomes invalid, and the dispute must be referred to court. Some court decisions, including one in India, have ruled that merely naming a specific arbitrator does not preclude the court from appointing a substitute if the named arbitrator refuses or resigns.

Article 11(5) of Iran's Law on International Commercial Arbitration states:

> *"If the arbitration agreement obligates the parties to refer disputes to a specific arbitrator or arbitrators, and that person or persons refuse or are unable to act as arbitrators, the arbitration agreement shall be void unless the parties agree*

1 *ICSID Arbitration Rules* (2006) https://icsid.worldbank.org/rules accessed 10 July 2024.
2 Levine, Op. Cit., (2019) 294.

to appoint another arbitrator or arbitrators or have otherwise provided for such a scenario."

Similarly, Article 463 of Iran's Code of Civil Procedure provides:

"If the parties are obligated to refer disputes to a specific arbitrator, and that arbitrator refuses or is unable to act, and the parties do not agree on a substitute, jurisdiction over the dispute shall revert to the court."

Clearly, an arbitrator's resignation is a prime example of "refusal to act" under both provisions and such refusal should elapse two months.

2.2. Authority to Receive and Accept Resignation

Does resignation alone relieve an arbitrator of their duties, or must it be accepted by a designated authority?

- **In ad hoc arbitration**, no authority other than the parties is involved to accept the resignation. Since arbitrators accept their appointment by agreement with the parties, resignation must be submitted to the parties, and there appears to be no requirement for formal acceptance. If the arbitrator was appointed by a court or a designated appointing authority, the resignation must be notified to that authority.
- **In institutional arbitration**, resignation is submitted to the arbitral institution, which, per its rules, refers the matter to the parties or a decision-making body for acceptance. Some institutions do not designate a specific authority to decide on resignations, meaning the resignation takes effect upon its submission.

Under *ICSID Rules*, resignation requires valid reasons and must be notified to the Secretary-General. Its acceptance depends on the consent of the other tribunal members. Where resignation is contingent upon approval by a specific authority, the effective date of resignation is the date of acceptance or a date determined by that authority.

2.3. The Effects of Resignation on the Arbitrator's Civil and Professional Liability

The civil liability of an arbitrator for unjustified or bad-faith resignation is governed by general liability principles. Therefore, provided that the arbitrator's resignation or refusal to perform their duties in accordance with the arbitration terms causes harm to one of the parties and a causal link is proven, the arbitrator will be liable to the parties. (Article 501 of the Code of Civil Procedure) Exemption clauses found in the rules of some arbitral institutions regarding the Secretary-General, staff, and arbitrators cannot be extended to cases of resignation, as such exemptions apply only when the arbitrator performs their duties in accordance with the rules. An unjustified or bad-faith resignation cannot be exempted from liability, as properly emphasized in Article 473 of the Code of Civil Procedure, which explicitly holds arbitrators liable for damages in such cases.

From a professional liability perspective, by accepting an arbitral appointment, an arbitrator implicitly undertakes to adjudicate the dispute and, by necessary implication, commits not to

resign, refuse, or withdraw before the conclusion of proceedings and issuance of the award- unless valid and reasonable grounds exist. Gary Born, a prominent international arbitrator, has stated: *"Regardless of whether explicit regulations exist, an arbitrator who accepts an appointment is obligated to fulfill their duties until the end of the proceedings."* Arbitrators who resign without valid justification lose credibility within the professional community, and their conduct may be motivated by an intent to influence the proceedings or cause delays.[1] Article 473 of the Code of Civil Procedure imposes a five-year disqualification from serving as an arbitrator in such cases.

However, an arbitrator's professional liability in case of resignation must be assessed based on the underlying reasons. One scholar categorizes the grounds for resignation as follows: *i)* unfounded challenges; *ii)* health or personal reasons; *iii)* new professional commitments; and *iv)* emergence of new conflicts of interest.

Resignations under categories *I & IV* are often necessary to preserve the arbitration's legitimacy and integrity and should not trigger professional liability. Unfortunately, some resignations are premeditated and coordinated with one party to influence the proceedings or outcome, which unquestionably entails liability.[2]

Even justified resignations impose additional costs and delays. Thus, ethical codes and guidelines should require arbitrators to carefully consider all foreseeable circumstances- such as health, age (as advanced age may hinder performance), existing or potential conflicts of interest, and future professional commitments- before accepting an appointment.

Resignation following a challenge (even if unfounded) can safeguard the parties' trust in the process. An arbitrator who is challenged may voluntarily step down early to preserve the arbitration's perceived impartiality, even without admitting the grounds for challenge. Such withdrawals often save time and costs. Therefore, resignations due to challenges or newly discovered conflicts should be deemed justified and unforeseeable, absolving the arbitrator of liability.

A significant number of resignations result from hidden agreements between a party and the resigning arbitrator. These covert arrangements- rarely disclosed to tribunals or appointing authorities- manifest only in brief resignation letters, obscuring the underlying collusion. Such resignations aim to: *i)* alter tribunal composition, *ii)* exert pressure on the remaining arbitrators, *iii)* prolong proceedings, or *iv)* influence the final award.

The minimalist approach of arbitration laws/rules toward resignation stems from the difficulty of proving these ulterior motives.

The resigning arbitrator's entitlement to fees and expenses depends primarily on the parties' agreement (if any). In institutional arbitration, the institution's rules and practices govern. Generally, the arbitrator is entitled to pro-rated fees commensurate with work completed, subject to approval by the presiding arbitrator or Secretary-General. There have been cases where a party-appointed arbitrator's claimed fees were reduced by the tribunal chair.

If the arbitrator has been overpaid, the excess amount is recoverable by the parties or the

1 Born GB, *International Arbitration: Law and Practice* (2nd edn, Wolters Kluwer 2016) 282.
2 Levine, Op. Cit., (2019) 290.

institution. Article 25(3) of the English Arbitration Act 1996 explicitly permits any interested party (including the arbitrator) to seek a court order for fee adjustments or refunds.

2.4. The Effects of Resignation on Proceedings and the Feasibility of Adjudication by an Truncated Tribunal

As mentioned above, resignation and its acceptance necessarily suspend proceedings pending the appointment of substitute arbitrators. Such appointments typically require granting the new arbitrator sufficient time to review the case file and potentially repeat hearings. Unlike arbitrator challenges- which do not automatically suspend proceedings- resignation inevitably halts the process. In sole-arbitrator cases, resignation leaves no adjudicatory body, while in multi-member tribunals, it disrupts the agreed composition. Absent contrary provisions or agreements, resignation must therefore be deemed to suspend proceedings until the tribunal is reconstituted through replacement appointments.

Two approaches exist to mitigate delays caused by resignation:

1. Adjudication by an incomplete or truncated tribunal, allowing remaining members to continue proceedings and render awards without replacement; or
2. Expedited replacement by the appointing authority, which both deters unjustified/coordinated resignations and minimizes procedural interruptions.

While adjudication by incomplete tribunals generally contravenes parties' original agreements on tribunal constitution, many arbitration laws/rules permit it to counter tactical resignations or non-participation aimed at disrupting proceedings.[1] For instance:

- *Article 474 of Iran's Code of Civil Procedure* authorizes the two remaining arbitrators (forming an incomplete tribunal) to continue proceedings and issue awards if one arbitrator resigns without justification, misses two consecutive hearings, or refuses to deliberate. Only if the two arbitrators deadlock must the court appoint a replacement within ten days (unless the parties nominate one earlier). Notably, the law restarts the arbitral timeline from the replacement arbitrator's acceptance date- a measure almost certain to prolong proceedings.
- *ICSID Rules (Articles 25 & 26)* mandate that if a party-appointed arbitrator resigns without tribunal approval (i.e., without reasons accepted by co-arbitrators), the Secretary-General- rather than the original appointing method- selects a replacement from the Panel of Arbitrators.

3. Review of the Characteristics of the Iran-U.S. Claims Tribunal and Its Procedural Achievements Regarding the Resignation of Arbitrators

The Iran-U.S. Claims Tribunal, established as an arbitral tribunal under Article II of the Claims Settlement Declaration, adopted the 1976 UNCITRAL Arbitration Rules as its governing procedural rules, with certain modifications and amendments. These amendments were made partly during

1 Born, Op. Cit., (2016) 150.

the Tribunal's initial formation through plenary sessions attended by all arbitrators (the Members) (the Full Tribunal), and partly during the Tribunal's operation in response to practical challenges, evolving circumstances, and accumulated experience in implementing these rules.

It was evident that the UNCITRAL Rules, originally designed for ad hoc arbitrations, could not effectively govern the extensive and continuous operations of an institutional arbitration body like the Iran-U.S. Claims Tribunal without modifications. Other distinctive features of this Tribunal-including the diversity, volume, and number of cases; the involvement of states and large corporations as parties; the unfamiliarity of some Iranian arbitrators with arbitration culture; and the cultural diversity of the arbitrators- necessitated adjustments to the relatively untested and nascent 1976 UNCITRAL Rules at the time of the Tribunal's establishment in 1981.

The application of the UNCITRAL Rules at the Tribunal led to significant developments and the establishment of practices that influenced not only these rules but also international arbitration procedure more broadly. Most commentators writing on the UNCITRAL Rules or arbitration procedure in general have drawn extensively from the Tribunal's experiences and practices.[1]

Beyond its substantive contributions to international law and dispute resolution, the Iran-U.S. Claims Tribunal possesses unique structural and functional characteristics that distinguish it from other dispute resolution mechanisms, particularly ad hoc and institutional arbitrations.[2] While the Tribunal operates as an institutional arbitration body, it adopted the UNCITRAL Rules originally designed for ad hoc arbitrations, making necessary modifications inevitable.

In this regard, the Tribunal's proceedings cannot be considered ad hoc arbitration, as this structure was created to adjudicate all claims under the Algiers Declarations. The parties were obligated to bring their disputes exclusively before this forum, with national courts expressly barred from hearing such cases by agreement or legal provisions.[3] The mandatory jurisdiction of the Tribunal over claims under the Declarations, the application of its rules, the appointment of arbitrators by the state parties and the presiding arbitrator under these rules, and the impossibility of case-by-case arbitrator selection by the parties all clearly remove the Tribunal's proceedings from the realm of ad hoc arbitration.

While the Iran-U.S. Claims Tribunal represents institutional arbitration, it differs significantly from other arbitral institutions, particularly in the method of arbitrator appointment and their mandate. According to Article III of the Claims Settlement Declaration, each government appoints three arbitrators, with three more appointed by mutual agreement. The Tribunal consists of three Chambers and a Full Tribunal. Each Chamber includes one arbitrator appointed by Iran, one by the United States, and a mutually agreed presiding arbitrator. The Full Tribunal comprises all nine arbitrators and is administered by the President of the Tribunal, selected by agreement of the parties from among the three neutral arbitrators.

The appointing authority, responsible for designating arbitrators when the two governments

1 Caron DD and Caplan LM, *The UNCITRAL Arbitration Rules: A Commentary* (OUP 2010).

2 Mohsen Mohebi (author), Mohammad Habibi Mojandeh (trans), *The Iran-US Claims Tribunal: Nature, Structure and Function* (Shahr-e Danesh Publication 2021); Seyed Khalil Khaleelian, *Legal Claims Between Iran and the US Before the Hague Tribunal* (Sahami Enteshar 2003).

3 *Dames & Moore v Regan* 453 US 654 (1981).

cannot agree on neutral arbitrators or the President, is the Secretary-General of the Permanent Court of Arbitration under the UNCITRAL Rules. This authority is typically delegated to a domestic or international judicial official.

Cases registered with the Tribunal are referred to either a Chamber or the Full Tribunal based on subject matter or party criteria. For instance, disputes between the two governments and interpretive disputes fall under the Full Tribunal's jurisdiction, while claims by nationals of one state against the other government are heard by Chambers, assigned to the relevant Chamber by the President based on subject matter. Currently, no cases are pending before the Chambers, with all active cases being heard by the Full Tribunal.

As noted, the members of each Chamber and the Full Tribunal remain constant for assigned cases, with no case-specific arbitrator appointments. Arbitrators are obligated to hear all cases referred to their Chamber or the Full Tribunal. Their mandate is not limited by time or specific cases, although provisions exist for the exceptional appointment of case-specific arbitrators by either government under special circumstances.

This unique structure gives rise to distinct considerations and rulings on various arbitration matters at the Tribunal. For example, when an arbitrator is challenged by a party, it must be determined whether the challenge concerns the arbitrator's impartiality and independence generally or only with respect to the specific case at hand. Arbitrator resignation is another issue that has arisen at the Iran-U.S. Claims Tribunal, acquiring significant legal and practical dimensions due to the Tribunal's special characteristics, which will be examined to the extent possible in the following section.

4. Resignation of Arbitrators in the Practice of the Iran-U.S. Claims Tribunal

The Iran-U.S. Claims Tribunal operates under the 1976 UNCITRAL Arbitration Rules, as modified by agreement of the parties. These rules were originally designed for ad hoc commercial arbitrations and are naturally suited to two characteristics: the commercial nature of disputes and the non-institutional character of arbitration. However, the Tribunal's arbitrations are typically non-commercial in nature, and while not ad hoc, they also differ significantly from conventional institutional arbitrations.

As stated in the Algiers Accords, the Tribunal was established to hear claims by nationals against governments and between governments. Generally, the causes of these claims are not contractual or purely contractual, but rather stem from sovereign acts and decisions of governments, such as expropriation, deprivation, denial of government permits, or sovereign interventions. Given the predominance of claims by nationals against governments before the Tribunal, its environment more closely resembles that of investment arbitrations and requires rules appropriate to such cases.

On the other hand, the Tribunal's establishment as an institution unquestionably removes it from the realm of ad hoc arbitration. Yet this institution differs markedly from other arbitral institutions. The institution's costs are borne by the governments; the arbitrators are not appointed or selected by the disputing parties but rather each government appoints its

own arbitrators while the three neutral arbitrators are selected either by agreement or by the appointing authority. Cases are referred to the Chambers or the Full Tribunal according to the Tribunal's rules and criteria. An arbitrator does not complete their duties by deciding one case; rather, all cases referred to a Chamber must be heard. Arbitrators are not required to accept appointment for each individual case, but for each case where grounds for doubt regarding impartiality or independence exist, the arbitrator must disclose them. Arbitrators' fees are paid not per case but for full-time service at the Tribunal. These factors reveal the distinct nature of the relationship between arbitrators and the institution, as well as the parties, making the issue of arbitrator resignation at this Tribunal fundamentally different from both institutional and ad hoc arbitrations.

4.1. The Feasibility of Arbitrator Resignation and the Authority to Receive and Accept Resignations at the Iran-U.S. Claims Tribunal

Given what has been stated about the Tribunal and its characteristics, along with its continuous operation for over four decades and the absence of fixed terms for arbitrators, it is natural that arbitrators should have the possibility or right to resign. Accepting appointment to serve on the Tribunal does not mean agreeing to remain in that position for life, particularly since there are no age limits or retirement provisions for arbitrators, and governments are not permitted to remove their appointed arbitrators.

On the other hand, physical, personal, and professional circumstances may necessitate an arbitrator's withdrawal from this position, or even hidden or overt government desires to make changes to the Tribunal may motivate such resignations. In light of the absence of any provision prohibiting or restricting resignation in the Tribunal's rules, it must be concluded that arbitrator resignations are permitted at the Tribunal.

The next challenging question concerns the authority to receive and accept resignations at the Tribunal. The party-appointed arbitrators are selected by their governments, and the neutral arbitrators are chosen directly or indirectly by the agreement of two governments. This situation has led to the assumption that submitting a resignation to the appointing government and its acceptance by the same would terminate the arbitrator's mandate. However, the Tribunal's practice and decisions of the Full Tribunal have established that the Full Tribunal is the authority for accepting resignations, and merely submitting a resignation to the appointing government does not relieve the arbitrator of their duties.

Given the volume, variety, and large number of cases before the Tribunal and the impact of resignations on pending cases in each Chamber or the Full Tribunal, the Full Tribunal has been designated as the authority to accept resignations and determine their effective dates, considering current cases under review and the reasons and circumstances for resignation.[1]

Article 13(1) of the UNCITRAL Arbitration Rules, as adopted by the Tribunal, provides that in the event of the death or resignation of an arbitrator during proceedings, a substitute arbitrator shall be appointed pursuant to the rules for the original appointment. Subsequent paragraphs of this article provide for the possible appointment of a number of reserve or substitute arbitrators

1 See Attachment A to the Tribunal Decision of 1 May, 2007, at Iran- U.S. Claims Tribunal Reports, Vol. 38, p.183.

by the two governments, as well as agreement on a reserve arbitrator for cases where arbitrators are temporarily unable to perform their duties.

4.2. The Addition of Paragraph 5 to Article 13 of the Tribunal's Rules (The "Mosk Rule")

One of the key issues arising from arbitrator resignations at the Tribunal concerns the disposition of pending cases. Since Chambers and the Full Tribunal typically handle multiple cases at various stages of proceedings, *Paragraph 5 was added to Article 13* of the Tribunal's Rules, which provides:

> *"After the effective date of a member's resignation he shall continue to serve as a member of the Tribunal with respect to all cases in which he had participated in a hearing on the merits, and for that purpose shall be considered a member of the Tribunal instead of the person who replaces him."*

This provision, known as the "Mosk Rule" in the Tribunal's practice, was instituted following the resignation of U.S. arbitrator Richard Mosk, who assumed a high-ranking government position in the United States. The rule ensures that resigning arbitrators continue to participate in cases where they have already engaged in merits hearings, while newly appointed arbitrators handle other cases and general Tribunal duties. The resigning arbitrator is relieved only from pending cases not yet at the merits stage.

The term *"hearings on the merits"* refers to phases where proceedings have advanced beyond preliminary stages and the case management meeting for the examination of evidence and parties' arguments. This prevents the need to repeat time-consuming hearings and avoids prolonging proceedings due to resignations.

Typically, when accepting a resignation and setting its effective date, the Full Tribunal specifies the cases subject to the Mosk Rule and requires the resigning arbitrator to continue participation. The arbitrator remains entitled to fees for time spent on these cases.

Key Questions Regarding Enforcement of the Mosk Rule:

1. Can a resigning arbitrator be exempted from Paragraph 5?
2. Can the Full Tribunal grant such an exemption?
3. If exempted, should proceedings continue with a truncated tribunal or with a newly appointed arbitrator?
4. In the latter case, must hearings be repeated?

These issues were examined during the resignation of Judge Assadollah Noori in *Case B-61*[1] and his replacement by Judge Oloumi Yazdi (the author). To avoid subjective interpretations, the analysis below draws solely from the Tribunal's official reports, newsletters, and decisions.[2]

1 The Islamic Republic of Iran v. The United States of America, IUSCT Case No. B61

2 Oloumi Yazdi HR, 'The Unjustified Expansion of the Deliberation Concept and the Confidentiality Rule in Arbitration' in *From Rights-Based Governance to Rule of Law* (Ganj-e Danesh Publication 2011) [in Persian].

4.3. Tribunal Practice in a Case of Resignation and Conditions for Deviating from the Mosk Rule

Judge Noori (the Iranian arbitrator in Chamber One), who had participated in all merits hearings for *Case B-61*, submitted his resignation on 1 November 2006, proposing 1 January 2007 as the effective date. In its *6 November 2006 decision*, the Full Tribunal set 3 March 2007 (the day after the completion of *B-61*'s merits hearings) as the definitive resignation date. Judge Noori had stated in his resignation letter that he did not intend to participate in the remainder of *B-61*'s proceedings under Article 13(5). Nevertheless, the Tribunal ruled that the Mosk Rule applied to him for Cases *A-3*, *A-8*, *A-9*, *A-14*, and *B-61*.

The Tribunal later outlined financial terms for Judge Noori's continued involvement in *B-61* and requested his written confirmation to abide by Article 13(5). When he failed to accept these terms, the Tribunal concluded in its *1 May 2007 decision* that he had effectively exempted himself from the Mosk Rule. It then appointed Judge Oloumi Yazdi to replace him for all remaining matters in *B-61*.

The U.S. had argued in its *20 April 2007 letter* that Judge Noori must participate in deliberations, and if the Tribunal could not enforce this, the only acceptable solution was to continue deliberations solely with the arbitrators who had attended the merits hearings.

In its *1 May 2007 decision* (adopted by 8 votes to 1), the Tribunal addressed two key questions:

1. Whether Judge Noori had validly exempted himself from the Mosk Rule;
2. Whether Judge Oloumi should join *B-61*'s deliberations (as Iran argued) or whether the Tribunal should proceed with 8 members (as the U.S. contended).

The Tribunal ruled:

- Judge Oloumi would immediately replace Judge Noori for all phases of *B-61*.
- Judge Oloumi would be granted adequate time to prepare for deliberations.
- He could invoke Article 14 (allowing new arbitrators to request rehearings),[1] subject to the tribunal's discretion.[2]

As noted, *i)* the *effective date of resignation* is determined by the Tribunal, not the arbitrator; *ii)* the Tribunal *presumptively requires* resigning arbitrators to continue in cases where they participated in merits hearings, regardless of their personal preference; *iii)* if continuation becomes impossible, the Tribunal *prefers appointing a new arbitrator* over proceeding with a truncated tribunal; and *iv)* new arbitrators may request re-hearings under Article 14, but the tribunal retains ultimate discretion.

This approach underscores the Tribunal's commitment to procedural integrity and fairness, balancing efficiency with the parties' right to a complete tribunal.

1 Article 14 of the Tribunal Rules stipulates: *"If a member of the Full Tribunal or of a Chamber is replaced or if a substitute is appointed for him, the arbitral tribunal shall determine whether all, any part or none of any previous hearings shall be repeated."*
2 *Mealey's International Arbitration Report* (2008) 23(5) 67-.

Conclusion

Arbitrator resignation, despite all ethical, professional, and legal considerations, remains unavoidable. The silence or inadequate attention of national laws and ad hoc/institutional arbitration rules on this matter has created a legal vacuum and ambiguity, opening the door for speculation and inconsistent practices. The legal dimensions of resignation- including the authority to receive and approve it, determination of its effective date, appointment of substitute arbitrators, or continuation by a truncated tribunal- must be explicitly addressed in arbitration laws and rules.

Legal sanctions, alongside ethical and professional consequences, should be established for resignations motivated by bad faith, collusion, or external pressure from parties. In the final stages of proceedings, resignation should be prohibited or strictly limited to exceptional and unavoidable circumstances (e.g., serious illness).

To deter unjustified, obstructive, or coerced resignations, two measures are critical:

1. Permitting proceedings to continue with an incomplete tribunal in cases of bad-faith resignation; and
2. Empowering appointing authorities, and not the parties, to appoint the substitute arbitrators in such scenarios.

In short, the hidden dimensions of this "iceberg" must be surfaced through open discourse to develop more precise and equitable regulations. Model arbitration laws and institutional rules urgently require updates to address these gaps systematically.

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