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The Precedential Value of the Iran-United States Claims Tribunal's Awards and Decisions in the Development of International Law

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ABSTRACT

The Iran-United States Claims Tribunal (IUSCT), throughout its operation, has successfully resolved a significant number of claims and disputes—including claims by nationals against the state and state-to-state disputes—within the sensitive legal and complex political milieus between Iran and the United States. Nevertheless, the Tribunal's role in the international arena extends beyond this inter-state dimension: its awards and decisions, as widely acknowledged, have played a significant role in the development of law on a global scale, particularly in international arbitration, international investment, and international commercial law. A structured, analytical, and methodological study of the Tribunal's impact on the development of law in the international arena necessitates an examination of its awards and decisions across various legal fields. These include contract law, international commercial law, and international law—particularly international investment law. The first step in such a study is to assess the status of the Tribunal's awards and decisions in the international arena, particularly their precedential value, in order to ascertain the reasons for and mechanisms behind their influence on the development of law globally. This article, while clarifying that the awards and judgments of international courts and tribunals—including the IUSCT—are not generally binding precedent, seeks to demonstrate that these decisions may nevertheless serve as persuasive authority relied upon by other arbitral and judicial bodies on both procedural and substantive matters. The criteria for evaluating the nature and extent of this persuasive value are analyzed in this study. It is argued that the Tribunal's rulings, as decisions rendered on diverse subject matters within the legal framework applicable to various other international commercial or investment disputes—and issued by an international claims tribunal with established external credibility and consistent internal jurisprudence—carry significant persuasive precedential value in the international arena.

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Introduction

The Iran-United States Claims Tribunal (IUSCT) was established pursuant to the 19 January 1981 Algiers Declarations to resolve issues arising from the seizure of the U.S. Embassy and to settle financial disputes between the governments of Iran and the United States, as well as claims by nationals of either state against the other government.[1] Over more than four decades of operation, having issued numerous awards in the cases brought before it, the Tribunal has been instrumental in effecting significant developments in international arbitration law, international commercial law, and international investment law.

It is undeniable that the Tribunal has successfully facilitated the peaceful resolution of a substantial number of state-to-state claims and claims by nationals against states within the context of relations between Iran and the United States.[2] Despite potential criticisms that may be raised regarding the Tribunal's adjudicatory quality or enforcement mechanisms, it remains an indisputable fact that the Tribunal has managed to peacefully resolve this volume of disputes

1 The Algiers Declarations consist of two legal instruments: The first instrument, entitled 'Declaration of the Government of the Democratic and Popular Republic of Algeria', comprises four articles and 17 paragraphs. As it reflects the general commitments of the parties, it is commonly referred to as the 'General Declaration'. The second instrument is entitled 'Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran', which complements the first Declaration. Pursuant to paragraph 2 of the General Declaration, this is referred to as the 'Claims Settlement Declaration'. The Declarations and related undertakings were signed simultaneously on 19 January 1981 by the governments of Iran and the United States, and were immediately published and entered into force through the Algerian government.

2 Recent data indicate that the Tribunal has adjudicated 3,938 out of approximately 4,000 claims filed (precisely 3,953 claims) through Awards, Orders, or Decisions. The remaining cases before the Tribunal are primarily state-to-state claims, which—with the exception of one counterclaim by the United States—consist entirely of claims by the Government of the Islamic Republic of Iran against the United States. These include (a) claims arising out of contractual arrangements between the two governments for the purchase and slae of goods and services (Category B claims; the so-called *official claims*); and (b) disputes regarding the interpretation or performance of any provision of the General Declarations (Category A claims). The sole remaining private claim (Case No. 344, *Singer Company v. The Government of the Islamic Republic of Iran*) resulted in an Award on Agreed Terms following settlement, but its enforcement has been suspended by the United States government citing export control regulations. The outstanding enforcement issue in this private claim, at the request of the Iranian government, currently awaits the Tribunal's final determination in relation to the Islamic Republic of Iran's original claim concerning assets subject to export controls. Excluding this private claim, while the nominal number of remaining inter-state claims (both Category A and B) stands at 14, there are in fact only 10 open cases. This discrepancy arises because: (i) Cases A 15 and B 1 contain multiple claims adjudicated or being adjudicated as separate cases; and (ii) several remaining claims have been consolidated by the Tribunal due to subject-matter connection. The Tribunal's most recent substantive awards (Award No. 602 in Cases A 15(IV) and A 24; and Award No. 604 in Cases A 15(II:A), A 26(IV) and B 43) found multiple violations of international obligations by the United States government and ordered the United States to compensation Iran for the resulting damages. These were issued on 2 July 2014 and 10 March 2020 respectively, and are available on the Tribunal's website at http://www.iusct.com.

between the two governments—a notable achievement that has garnered recognition from scholars.[1]

However, the Tribunal's international impact has not been limited to this intergovernmental dimension; indeed, beyond this bilateral context, it is widely acknowledged that the Tribunal has played a substantial role in the development of law.[2] The Tribunal's awards currently serve as one of the primary sources for clarifying international arbitration practices, being cited as authority on both procedural and substantive matters by arbitral and judicial bodies. The procedural aspects in international commercial and investment arbitration, particularly given the Tribunal's adoption of the 1976 UNCITRAL Arbitration Rules, have received detailed consideration by arbitral tribunals and legal scholars.[3]

Substantively, the Tribunal's prominent influence has been consistently recognized, particularly in international investment law, through establishing precedents on matters of indirect expropriation and compensation methods; and in international commercial law, through its role in developing principles within transnational commercial law (a form of *lex mercatoria*) concerning matters such as force majeure, fundamental change of circumstances (hardship), and remedies for breach of obligation.

The Tribunal's influence on legal development can be assessed from a general perspective—for instance, by examining whether its overall performance has demonstrated the efficacy of a particular set of arbitration rules in resolving international disputes, or by determining, in substantive terms, the scope and quality of legal protections afforded to foreign investors in practice. Alternatively, and preferably in the author's view, such assessment may be conducted through analysis of the Tribunal's specific awards and decisions. These rulings, rendered across diverse areas of contract law, international trade law, public international law, and particularly international investment law, may contain interpretations and solutions that have been subsequently followed by other adjudicatory bodies, thereby facilitating the growth and development of various dimensions of international law.

In the author's view, in assessing the Tribunal's impact on the development of law, this latter structural approach is more analytical and insightful, and can objectively and tangibly demonstrate the Tribunal's influence on the evolution and development of various aspects

1 Scholarly characterizations of the IUSCT are noteworthy. Some have described it as "the most significant arbitral body in history": Richard B Lillich, *The Iran-United States Claims Tribunal, 1981-1983* (University Press of Virginia 1984) Preface, i, vii. Others have referred to it as "the single most influential "claims tribunal" of all times": Timothy G Nelson, 'History Ain't Changed: Why Investor-State Arbitration Will Survive the "New Revolution"' in Michael Waibel and others, *The Backlash against Investment Arbitration: Perceptions and Reality* (Kluwer Law International 2010) 555-575 at 570.

2 It is undeniable that the Tribunal has adjudicated a substantial number of state-to-state and national-against-state claims across diverse legal matters through reasoned decisions, with all awards being publicly accessible. Four key aspects are particularly significant when examining the Tribunal's role in the development of law in the international arena: (1) the adjudication of numerous claims; (2) across multiple domains (ranging from debt, contract, and expropriation cases to complex inter-state contractual disputes and treaty-based claims concerning the interpretation or implementation of the General Declarations); (3) through reasoned decisions (as required by Article 32(3) of its Rules of Procedure); (4) which are publicly available (in compliance with Article 32(5) of its Rules of Procedure).

3 See for instance: David Stewart and Mark D Davis, *The UNCITRAL Arbitration Rules In Practice: The Experience Of The Iran-United States Claims Tribunal* (Kluwer Law International 1992); David D Caron and Lee M Caplan, *The UNCITRAL Arbitration Rules: A Commentary* (OUP 2013); S.K. Khalilian, *The Law of International Arbitration: A Jurisprudential Study on the Iran-United States Claims Tribunal* (Pacific Arbitration Network 2003); Matti Pellonpaa and David D Caron, *The UNCITRAL Arbitration Rules as Interpreted and Applied: Selected Problems in Light of the Practice of the Iran-United States Claims Tribunal* (Finnish Lawyers' Pub. 1994).

of law in the international arena. However, a question that may arise at the outset is: what status do the Tribunal's awards and decisions hold in the international arena? Put differently, what is the precedential value of these decisions?[1] This question—which can also be posed, *mutatis mutandis*, regarding the awards and decisions of other international judicial and arbitral bodies—raises the issue of "precedent" in relation to such decisions. Can the Tribunal's awards be cited as precedent before other international fora, including both *ad hoc* and institutional arbitrations, particularly in the field of international investment law?[2]

The present analysis seeks solely to present a structural framework for this discussion—a framework within which the reasons for and the manner of the influence of the Tribunal's awards and decisions on the development of law in the international arena can be examined more objectively and coherently. While clarifying that the Tribunal's awards do not constitute binding precedent (**1**), this article examines the Tribunal's awards as persuasive authority/ precedent (**2**), and proposes a framework for evaluating the nature and extent of this persuasive effect by briefly explaining the criteria for an award's jurisprudential persuasiveness (**3**).

1. Are the Tribunal's Awards Binding Judicial Precedent?

It is evident that the awards of the IUSCT—and indeed those of other international tribunals—do not constitute binding judicial precedent (*stare decisis*). The doctrine of *stare decisis* is primarily a feature of common law systems, whereby a judicial decision on a particular legal issue establishes a rule that must be followed in subsequent similar cases.

Historically, the development of law in common law jurisdictions has been fundamentally shaped by this doctrine. For this reason, judges in English law are not merely dispute resolvers within their jurisdictional limits but are also regarded as lawmakers. This is because their rulings, subject to certain limits and conditions, create binding precedents that must be observed by the same court and other subordinate courts in analogous matters. Notably, even statutory interpretation by a judge takes precedence over the literal text of the law itself, meaning that adherence to such interpretations is mandatory under the doctrine of *stare decisis*.[3]

It is precisely for this reason that common law systems are sometimes referred to as *case law systems*, as judicial decisions are recognized as a dynamic and authoritative source of law. As aptly observed, the skill of a common law lawyer lies in relying on and applying analogous

1 To pre-empt any potential misunderstanding, it is necessary to emphasize this self-evident point, and of course, it is not hidden from legal experts, that the examination here does not concern the effect of an award between the parties to the dispute: the award in the specific case between the parties is final, binding, and carries *res judicata* effect, as indicated by Article IV(1) of the Claims Settlement Declaration and Article 32(2) of the Tribunal's Rules of Procedure. The present discussion rather focuses on the effect of the Tribunal's awards in subsequent similar cases, whether brought before this same Tribunal or before other arbitral or judicial bodies: specifically, whether the Tribunal's awards have binding effect in subsequent similar cases for the Tribunal itself or for other international tribunals and judicial bodies, and if so, on what basis and to what extent?

2 For a brief, though insightful, consideration of this issue regarding the judgments of the International Court of Justice ("ICJ"), see: Mir-Hossein Abedian and Reza Eftekhar, 'Reasonableness: A Guiding Light—A Probe into the World Court's Landmark Judgment on Substantive Standards of Investment Protection and Its Takeaways for Investment Treaty Tribunals' (2024) 40(3) Arbitration International 307. This article, while analyzing the impact of the ICJ's recent judgment in the case of *Certain Iranian Assets* on substantive standards of foreign investment protection, also addresses the precedential value of the ICJ judgments.

3 For further study, see: Michael Zander, *The Law-Making Process* (6th edn, CUP 2004) 21564-; Sebastian Lewis, ‹Precedent and the Rule of Law› (2021) 41 OJLS 873; Bryan A Garner and others, *The Law of Judicial Precedent* (Thomson Reuters 2016).

precedents to strengthen their argument while distinguishing and explaining unfavorable cases invoked by opposing counsel.[1]

In contrast, international law does not recognize the doctrine of *stare decisis*, and thus, the decisions of international tribunals are not subject to it. For instance, regarding judgments of the International Court of Justice (ICJ), Article 59 of its Statute explicitly states:

> *"The decision of the Court has no binding force except as between the parties and in respect of that particular case."*

Arbitral tribunals have similarly emphasized that prior decisions of international tribunals—including those of the ICJ—do not carry *binding force* as precedent. For example, in *Tulip Real Estate v. Turkey*, the arbitral tribunal, while examining whether it was obliged to follow the ICJ jurisprudence on treaty interpretation, held:

> *"On one hand, the Tribunal accords deference to relevant statements by the ICJ of general principles as to the construction of the terms of a treaty as those principles may apply to the construction of the BIT. On the other hand, as there is no precedential order in regard to previous decisions on the construction of bilateral investment treaties, the relevant enquiry remains for the Tribunal to interpret and apply the terms of the BIT itself. Prior decisions may inform that enquiry, but it is for this Tribunal to make its own interpretation of Article 8(2), informed by the rigor and persuasiveness of relevant analysis and statements by decisions of earlier tribunals."*[2]

A comparable approach prevails in investment arbitrations held under the auspices of the International Centre for the Settlement of Investment Disputes (ICSID). The doctrine of *stare decisis* does not apply to ICSID awards, and this is beyond dispute. However, there is broad consensus that ICSID tribunals strive for coherence and consistency in their decisions where possible. The tribunal in *SGS v. Philippines* underscored this principle, affirming that while ICSID tribunals should generally seek harmonious jurisprudence, each tribunal retains the authority to decide cases based on the applicable law, which may differ across BITs and respondent states. The tribunal explicitly rejected the notion of *stare decisis* in international law:

> *"In the Tribunal's view, although different tribunals constituted under the ICSID system should in general seek to act consistently with each other, in the end it must be for each tribunal to exercise its competence in accordance with the applicable law, which will by definition be different for each BIT and each Respondent State. Moreover there is no doctrine of precedent in international law, if by precedent is meant a rule of the binding effect of a single decision. There is no hierarchy of international tribunals, and even if there were, there is no good reason for allowing the*

1 Neil MacCormick, *Legal Reasoning and Legal Theory* (Clarendon Press 1994) 216 *et seq*., 219 *et seq*.
2 *Tulip Real Estate and Development Netherlands BV v Republic of Turkey*, ICSID Case No ARB/11/28, Decision on Bifurcated Jurisdictional Issue, 5 March 2013 [47].

> *first tribunal in time to resolve issues for all later tribunals. It must be initially for the control mechanisms provided for under the BIT and the ICSID Convention, and in the longer term for the development of a common legal opinion or jurisprudence constante, to resolve the difficult legal questions discussed by the SGS v. Pakistan Tribunal and also in the present decision."*[1]

In sum, the awards of international tribunals—including the IUSCT—are not *binding precedent*. From a technical point of view, a tribunal's decision binds neither itself nor other tribunals.

However, this does not mean that such awards lack precedential value altogether. While they are not binding, they may still function as *persuasive authority*. The Tribunal itself, to maintain its credibility, authority and integrity, as well as its jurisprudential coherence, often (though not invariably) follows its prior rulings unless compelling reasons justify departure. Similarly, other tribunals may, depending on various factors, adopt the Tribunal's reasoning in analogous issues or at least draw inspiration from it.

Ultimately, the true measure of a tribunal's impact on legal development—including that of the IUSCT—lies in the degree of persuasive influence its decisions exert on other international courts and arbitral bodies. The criteria for assessing this persuasive effect, particularly for the IUSCT, will be explored in subsequent sections.

2. Are the Tribunal's Awards Persuasive Authority?

It is necessary, at the outset, to provide an accurate understanding of the concept of *persuasive authority*. For clarity, the best example is a comparison between the *precedent-unifying ruling* (*ra'y-i vahdat-i raviyah*) and the *reiterated ruling* (*ra'y-i iṣrārī*) of the Plenary Session of the Supreme Court in the judicial system of Iran:

- A *precedent-unifying ruling* has the force of law and imposes a binding legal effect on all judicial and arbitral bodies in applying Iranian law.
- A *reiterated ruling*, while technically only binding on the parties to the specific case in which it was issued, is generally followed by other courts due to the *nature, composition, and authority* of the issuing body. Indeed, it must be said that while a reiterated ruling is not *binding judicial precedent*, it has a *persuasive effect*, meaning that courts, upon reviewing it, are convinced of the validity of its reasoning and interpretation and, in practice, adhere to it.

To grasp this concept in the realm of international arbitration and adjudication, the linguistic formulations used in some arbitral awards are instructive. For example, in cases where reliance is placed by either of the parties on the decisions of other tribunals or international bodies, the following concluding phrase can be found in nearly every investment arbitration award chaired by *Professor Gabrielle Kaufmann-Kohler*:

> *"The Tribunal considers that it is not bound by previous decisions. At the same*

1 *SGS Société Générale de Surveillance SA v Republic of the Philippines*, ICSID Case No ARB/02/6, Decision on Objections to Jurisdiction, 29 January 2004 [97].

> *time, it is of the opinion that it should pay due consideration to earlier decisions of international tribunals. It believes that, subject to compelling contrary grounds, it should be respectful of the reasoning and solutions established in a series of consistent cases. It also believes that, subject to the circumstances of an actual case, it has a duty to seek to contribute to the harmonious development of investment law and thereby to meet the legitimate expectations of the community of States and investors towards certainty of the rule of law."*[1]

This statement reflects the effect that an international court or tribunal may ascribe to the awards or decisions of other arbitral bodies: although these decisions are not, in the technical sense, binding, they may, under certain conditions, persuade an international court or tribunal to follow them and in this sense, they are regarded as persuasive authority. Judge *Mohammed Shahabuddeen*, a former judge of the ICJ, has highlighted this effect of the ICJ's decisions in a significant scholarly work:

> *"But the fact that the doctrine of binding precedent does not apply means that decisions of the Court are not binding precedents; it does not mean that they are not "precedents." [...] Nor is this surprising, for the fact is that the Court seeks guidance from its previous decisions, that is, regards them as reliable expositions of the law, and that, though having the power to depart from them, it will not lightly exercise that power. In these respects, the submission is that the court uses its previous decisions in much the same way as that in which a common law court of last resort will treat its own previous decisions. Thus, the fact that decisions of the court are not precedentially binding is not likely to interest the common lawyer very much."*[2]

Judge Shahabuddeen's statement, insofar as it pertains to explaining the *persuasive effect* of the ICJ's decisions, is entirely understandable: this degree of adherence to prior rulings (even if non-binding) helps maintain consistency in the legal system governing international relations and, in practice, fosters certainty and predictability. However, comparing the persuasive effect of the ICJ's prior decisions with that of the highest judicial authority in a common law system may raise doubts and questions:

- While the highest court in a common law system (e.g., the Supreme Court of the United Kingdom) generally has the authority to depart from its own precedent in exceptional cases, it must still be acknowledged that such precedent is *binding judicial precedent*.
- Departing from *binding precedent* appears fundamentally distinct from *not following persuasive authority*, which the ICJ or other international tribunals have established through their prior decisions.

The doctrinal necessity of adhering to binding precedent—as applied to the prior rulings of the highest court in a common law system—does not exist for the ICJ or other international

1 *Rand Investments Ltd and others v Republic of Serbia*, ICSID Case No ARB/18/8, Award, 29 June 2023 [190] [emphasis added].
2 Mohamed Shahabuddeen, *Precedent in the World Court* (Cambridge University Press 1996) 2-3 [footnotes omitted].

tribunals, which consider themselves bound by prior decisions only to preserve consistency, certainty, and predictability. Thus:

- In common law systems, departing from binding precedent is exceptional and requires strong justification.
- For the ICJ, however, choosing not to follow prior decisions, though rare, is relatively more ordinary.

A noteworthy question is: Under what circumstances, and with what degree of evidence and reasoning, might the ICJ be convinced to disregard its own prior persuasive authority and refrain from following it? This question may also arise in relation to any other international tribunal. Regarding the ICJ, Judge Shahabuddeen's separate opinion in the 1988 *Aerial Incident Case* may provide guidance. In his view, the criteria for departing from prior precedent are the existence of a *clear error* and *public mischief*, which generally align with the approach taken by the highest courts in common law systems:

> *"There should, I think, be clear error in the sense that the Court must be satisfied that the opposing arguments are not barely persuasive but are conclusively demonstrative of manifest error in a previous holding. And there should be public mischief, or something akin to it, in the sense that the injustice created by maintaining a previous but erroneous holding must decisively outweigh the injustice created by disturbing settled expectations based on the assumption of its continuance; mere marginal superiority of a new ruling should not suffice."*[1]

The requirement to prove clear error and public mischief is among the considerations that the highest court in a common law jurisdiction would consider before departing from binding precedent. Naturally, meeting these conditions occurs only in very rare and exceptional cases. In reality, departing from binding precedent is an extraordinarily serious step and is contemplated only in highly significant cases where prior precedent is clearly problematic.

By contrast, the ICJ—or other international tribunals—in declining to follow their own prior persuasive authority, at least in theory, do not face such stringent conditions. It has even been argued that the ICJ, in deciding whether to follow or disregard its prior persuasive authority, should give full consideration to the *requirements of justice* in the context of the particular case before it and should not consider itself bound by prior decisions merely for ensuring consistency, predictability, or efficiency.[2]

3. Criteria for the Persuasive Authority of Awards

The degree of persuasive authority attached to the awards and decisions of international judicial and arbitral bodies depends on several factors, including the international status and position of

1 *Aerial Incident of 3 July 1988 (Islamic Republic of Iran v United States of America)* (1989) ICJ Rep 132, (separate concurring opinion of Judge Shahabuddeen) 158, stating also: "In the absence of any clear guidelines having been adopted by the Court, [...] it would be reasonable for the Court to apply something corresponding to the twin tests of clear error and public mischief as known to the upper levels of judicial activity in many jurisdictions. [...]."

2 James G Devaney, 'The Role of Precedent in the Jurisprudence of the International Court of Justice: A Constructive Interpretation' (2022) 35 Leiden Journal of International Law 641.

the decision-making body, the internal consistency of its decisions, and the degree of substantive and jurisprudential similarity between the award and subsequent cases. This article offers a brief analysis of these factors in the context of the awards and decisions of the IUSCT, structured under the headings of external credibility (**a**), internal consistency (**b**), and substantive/jurisprudential similarity (**c**).

3.1. External Credibility

External credibility encompasses the international standing[1] of the decision-making body as well as its commitment to maintaining its integrity. The higher the credibility and standing of a body in the international arena, the more persuasive its issued awards will be. For example, the awards of the ICJ generally enjoy high credibility due to its elevated position in the international legal system.

In terms of international standing, the nature of the Tribunal and its reputation for resolving a significant number of international disputes have generally been emphasized.[2] Furthermore, the Tribunal's efforts throughout its years of operation to ensure due process and to uphold its independence and impartiality (supported by the existing mechanisms for verifying the existence and continuance of these qualities) have largely affirmed the perception of the Tribunal's integrity. Despite the political sensitivities surrounding the cases, it can be confidently asserted that the Tribunal has generally upheld its impartiality and independence, striving to base its decisions transparently on legal principles, justice, equity and the evidence presented in each case, rather than political considerations.

Indeed, despite certain political and executive challenges and limitations, the international external credibility of the IUSCT has seldom been questioned, primarily owing to its reputation for peacefully resolving a substantial number of disputes of varying (and sometimes complex) natures, even amidst the intricate and challenging political climate in Iran–United States relations.

3.2. Internal Consistency

Complementing this *external credibility*, *internal consistency* stands as another key factor contributing to the persuasive authority of an international tribunal's awards and decisions. Internal consistency refers, firstly, to the coherence within the Tribunal's body of issued awards. This implies that the Tribunal has refrained from departing from its established practice without compelling and decisive reasons and has tried to maintain internal consistency in its awards and decisions, striving to maintain internal consistency across its awards and decisions. Secondly, this internal consistency is essentially predicated on the awards possessing adequate quality and robust argumentative strength.

The initial step in this regard is the necessity for *reasoned* awards. In the case of the IUSCT,

1 Reputational standing / Authoritative standing.

2 See, e.g., Richard B Lillich, Daniel B Magraw and David J Bederman, *The Iran-United States Claims Tribunal: Its Contribution to the Law of State Responsibility* (New York: Transatlantic Publishers 1998); Mohsen Mohebbi, *The International Law Character of the Iran-United States Claims Tribunal* (Kluwer Law International 1999); David D Caron and John R Crook, *The Iran-United States Claims Tribunal and the Process of International Claims Resolution* (Netherlands: Brill 2021); George H Aldrich, *The Jurisprudence of the Iran-United States Claims Tribunal: An Analysis of the Decisions of the Tribunal* (Oxford University Press 1996).

the Tribunal's arbitration rules have emphasized this necessity: "The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given. Any arbitrator may request that his dissenting vote or his dissenting vote and the reasons thereof be recorded."[1]

The second aspect is the presence of internal *reasoned consistency* within each Tribunal award. The requirement for reasoned Tribunal awards has, in most instances, fostered greater transparency by articulating the logical and reasoned progression leading to a specific conclusion, thereby exposing potential inconsistencies in the reasoning. Consequently, a considerable degree of reasoned consistency can be observed in the Tribunal's awards.

Finally, the third aspect involves the maintenance of reasoned consistency across the Tribunal's body of awards. This consistency is demonstrably present to a considerable degree, indicating that the Tribunal's rulings on specific issues have generally been followed by the Tribunal itself in analogous cases, with instances of deviation from prior practice without a compelling and clear justification being infrequent.

While a precise verification of these three characteristics requires detailed analyses of the Tribunal's awards and decisions, which falls outside the purview of this concise discussion, it can be generally asserted that the Tribunal's four-decade record, its published awards, and the significant citation of these awards by other arbitral and judicial bodies attest to the Tribunal's commitment to upholding internal consistency in its awards and decisions.

3.3. Substantive and Jurisprudential Similarity

Beyond these two crucial factors, the precedential value of awards from an international arbitral or judicial tribunal becomes evident when their application to other matters sharing substantive and jurisprudential similarities is discussed.

First, substantive similarity: The discussion of relying on and applying *precedent* (or drawing inspiration from it) primarily arises in cases involving substantively similar matters. Consequently, sufficient substantive similarity (not necessarily identicality) is an essential condition when assessing the applicability of a prior precedent from an international tribunal.

Given the broad scope of its jurisdiction, the IUSCT has rendered decisions across a wide spectrum of matters. From a procedural perspective, numerous aspects of the 1976 UNCITRAL Arbitration Rules (adopted with modifications as the Tribunal's rules of procedure) have been discussed and analysed in the Tribunal's awards. It can be confidently asserted that the UNCITRAL Arbitration Rules underwent their first rigorous testing within the IUSCT. Consequently, a diverse array of procedural issues has been meticulously and precisely examined in the Tribunal's awards and decisions in various ways. These issues range from matters concerning the appointment, challenge and removal of arbitrators to the specifics of conducting arbitral proceedings, and further encompass nuanced aspects of the Tribunal's authority to review its own awards, including correction, interpretation, and the issuance of additional awards, as well as the Tribunal's inherent authority to reconsider its own awards.[2]

1 Article 32(3) of the Tribunal Rules of Procedure.

2 See Mir-Hossein Abedian, 'Revision of Arbitral Awards: Inherent Authority of Arbitral Tribunal to Revise its Award – A Reflection on the Jurisprudence of Iran-United States Claims Tribunal' (2017) 1 *Iranian Yearbook of Arbitration* 155-208.

From a substantive perspective, the Tribunal's jurisdiction, as defined by Article II of the Claims Settlement Declaration, encompasses a wide array of contractual, non-contractual, treaty-based and investment claims. This includes private claims by nationals of one state against the other arising from matters such as debt, contract, unlawful expulsion, injury, expropriation, and measures affecting property rights (Article II(1) of the Claims Settlement Declaration). Furthermore, it extends to the claims of each government against the other arising out of contractual arrangements between them for the purchase and sale of goods and services (referred to as *official claims* under Article II(2) of the Claims Settlement Declaration), and complex treaty-based claims between the two governments stemming from the interpretation and implementation of any provision of the General Declaration (known as interpretative claims under Article II(3) of the Claims Settlement Declaration).[1]

Thus, the Tribunal's awards encompass a wide spectrum of matters relating to international arbitration law, international commercial contracts, and international law (particularly international investment law) within diverse substantive frameworks. These matters include various dimensions of international contracts (including formation, effects and termination), non-contractual legal issues and liabilities, matters concerning the interpretation and implementation of treaties, state responsibility under international law, detailed discussions on remedies, standards and methods for assessing damages, and other related matters.

This very diversity, both procedural and substantive, lends significant precedential weight to the Tribunal's awards, particularly concerning the requirement for sufficient substantive similarity. Indeed, one can find (with slight exaggeration) elements of almost every issue arising in international commercial disputes, international investment disputes, or even inter-state disputes within the Tribunal's body of decisions. Crucially, as mentioned earlier, the publication and accessibility of these awards and decisions, explicitly mandated by the Tribunal's Rules of Procedure,[2] is a noteworthy aspect in this context.

Second, Jurisprudential Similarity: In assessing the precedential value of the Tribunal's awards and considering their applicability to analogous issues, jurisprudential similarity, in addition to substantive similarity, must be taken into account. This implies that the substantive

1 Article II, Claims Settlement Declaration: "1. An international arbitral tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this Agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract·between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position.

2. The Tribunal shall also have jurisdiction over official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services.

3. The Tribunal shall have jurisdiction, as specified in Paragraphs 16-17 of the Declaration of the Government of Algeria of January 19, 1981, over any dispute as to the interpretation or performance of any provision of that Declaration."

2 Article 32(5) Tribunal Rules of Procedure: "All awards and other decisions shall be made available to the public, except that upon the request of one or more arbitrating parties, the arbitral tribunal may determine that it will not make the entire award or other decision public, but will make public only portions thereof from which the identity of the parties, other identifying facts and trade or military secrets have been deleted."

law applied (or the governing law) in the Tribunal's award and the legal context of the new case should be similar.[1]

This issue encompasses significant dimensions, but in practice, two key points warrant attention:

First Point: In determining the law governing the merits of disputes, the IUSCT enjoys broad discretion and flexibility. Article V of the Claims Settlement Declaration states:

> *"The tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances."*

This principle is also underscored in the Tribunal's Rules of Procedure.[2] Conferring such considerable discretion upon the Tribunal by the parties to the Algiers Declarations was a sound and well-considered decision. This is because, as noted earlier, the Tribunal's jurisdiction extends to an exceptionally broad spectrum of contractual, non-contractual, treaty-based, state-to-state, and investor-state claims. To effectively adjudicate such a diverse array of disputes, conferring upon the Tribunal this level of broad discretion and flexibility was entirely appropriate and justifiable.[3]

In practice, the Tribunal has effectively utilized this authority. While a comprehensive discussion of the governing law is beyond the scope of this analysis, a thorough examination would reveal three key points in this regard: Firstly, the application of *international law* in treaty-based disputes and cases concerning the interpretation and implementation of the Algiers Declarations (and occasionally in scenarios extending beyond these). Secondly, a discernible reluctance to apply the domestic law of either state in contractual matters and disputes, with a preference for a *"denationalised" transnational law* approach.[4] Thirdly, efforts to apply certain *general principles of law*, leading some scholars to characterise this as *lex mercatoria* codified by the IUSCT.[5]

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1 In cases where there exists a substantial divergence between the governing law (*lex causae*) applied in the Tribunal's award and the new legal context, the applicability of the Tribunal's ruling to such issue would either be fundamentally precluded or, at most, might be considered in an exceptionally limited capacity with minimal potential effect.

2 See Article 33 Tribunal Rules of Procedure.

3 The Tribunal itself has duly considered this issue in its award in *CMI International, Inc v Ministry of Roads and Transportation and Islamic Republic of Iran* (Award No 991-245-), where it expressly observed: "It is difficult to conceive of a choice of law provision that would give the Tribunal greater freedom in determining case by case the law relevant to the issues before it. Such freedom is consistent with, and perhaps almost essential to the scope of the tasks confronting the Tribunal, which include not only claims of a commercial nature, … but also claims involving alleged expropriations or other public acts, claims between the two Governments, certain claims between banking institutions, and issues of interpretation and implementation of the Algiers Declarations. Thus, the Tribunal may often find it necessary to interpret and apply treaties, customary international law, general principles of law and national laws, "taking into account relevant usages of the trade, contract provisions and changed circumstances." *CMI International Inc v Ministry of Roads and Transportation* (1983) 4 Iran-US CTR 267-268.

4 A notable example in this regard is *Mobil Oil Iran, Inc. v. Iran*, wherein the Tribunal—having considered multiple factors, including the transnational nature of the contract and the complex scope of the parties' respective rights and obligations—determined that applying the domestic law of either party would not constitute an appropriate solution. This conclusion was reached notwithstanding the existence of a contractual clause stipulating that the interpretation of the underlying contract would be governed by Iranian law. In other words, despite such contractual stipulation, the Tribunal declared the contract subject to general principles of commercial and international law, except in matters of interpretation. *Mobil Oil Iran, Inc., et al. v Government of the Islamic Republic of Iran and National Iranian Oil Company* (1987) 16 Iran-US CTR 3 [72]-[81].

5 *lex mercatoria* as evidenced in the arbitral awards rendered by the IUSCT.

Second Point: In international investment disputes, the governing law is predominantly (though not exclusively) international law.[1] This establishes a jurisprudential similarity between the Tribunal's awards and other investment arbitration cases, thereby justifying the frequent citation of the Tribunal's decisions in such disputes.

Regarding international commercial disputes, beyond the potential application of general principles of law (whether through party agreement, designation by the adjudicating body as the governing law, or at least as a source of inspiration for interpreting and clarifying the scope of the governing legal standards), it is noteworthy that, even when a specific national law applies, comparative studies of major legal systems reveal a *convergence* of national laws on issues such as: contract formation, effects, termination, remedies for non-performance, excused non-performance, fundamental change of circumstances, and the doctrines of force majeure and hardship.

Thus, while both of these points require further examination, a serious reflection on them leads to the conclusion that there is a significant degree of *jurisprudential similarity* to warrant citing and relying on the Tribunal's awards and decisions in other international investment and commercial disputes. Alternatively, at the very least, it can be fairly confidently asserted that the absence of complete similarity does *not* pose a serious obstacle to citing the Tribunal's jurisprudence – and consequently, to assessing its precedential value.

Conclusion

The existence of these characteristics in the awards of the IUSCT demonstrates their precedential value: awards that have been rendered on highly diverse substantive matters, within the framework of legal rules that are also applicable to most other international commercial or investment disputes, by an international claims tribunal with established external credibility and considerable internal consistency in its jurisprudence.

This very point underscores the role the Tribunal's awards have played in developing and consolidating the position of the 1976 UNCITRAL Arbitration Rules: as mentioned, the Tribunal adopted its arbitration rules from the UNCITRAL Rules with some modifications.[2] In fact, this Tribunal was the first body where the UNCITRAL Arbitration Rules were seriously and extensively tested.[3] This very fact contributed to the development of these rules in practice: the preparation of the UNCITRAL Model Law on International Commercial Arbitration in 1985[4] (which was used as the basis for Iran's Law on International Commercial Arbitration in 1997) owes much to the successful application of the 1976 UNCITRAL Arbitration Rules in practice,

1 In international investment disputes, the applicable law within the investment treaty framework typically comprises: (i) the treaty itself, (ii) international law, (iii) the domestic law of either the investor's home state or the host state, and (iv) the law governing the investment contract. However, the interpretation of state obligations concerning standards of protection enshrined in investment treaties, the modalities of compliance with such obligations, the international responsibility arising from their breach, and the available remedies for such violations are principally governed by international law. Consequently, the adjudication of a substantial range of substantive issues in investment disputes is conducted within the framework of international law.

2 Article III(2) Claims Settlement Declaration: "Members of the Tribunal shall be appointed and the Tribunal shall conduct its business in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the Parties or by the Tribunal to ensure that this Agreement can be carried out. The UNCITRAL rules for appointing members of three-member tribunals shall apply *mutatis mutandis* to the appointment of the Tribunal."

3 It should be noted, however, that prior to the IUSCT's application of the UNCITRAL Arbitration Rules, the Inter-American Commercial Arbitration Commission (IACAC) had incorporated them as procedural guidelines in its arbitral practice—a trend later replicated by other arbitral institutions.

4 UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments adopted in 2006.

particularly at the IUSCT. Furthermore, the inclusion of provisions allowing the use of these rules in investment arbitration within investment treaties[1] has undoubtedly been influenced by the experiences and successes gained from applying these rules in practice. Finally, the revised versions of these rules in 2010, 2013 and 2021 were significantly shaped by the practical experiences of their application at the IUSCT, in international investment arbitration, and in certain *ad hoc* international commercial arbitrations. It can confidently be asserted that the success of the UNCITRAL Arbitration Rules is, to a considerable extent, attributable to the decisions of the IUSCT in interpreting, clarifying, and identifying the gaps in these rules.

On the other hand, in matters of substance as well, the jurisprudence of the IUSCT has been widely applied and relied upon in international commercial and investment arbitration: this reliance has been particularly notable regarding issues such as indirect expropriation, dual nationality, remedies and compensation standards. The results of an empirical study conducted in 2006 show that in 44.7% of ICSID substantive awards, one or more awards of the IUSCT were cited and relied upon.[2]

Based on the findings of this empirical study, it has been suggested that four awards—*Amoco International,*[3] *Philips Petroleum,*[4] *Starrett Housing*[5] *and Tippetts*[6]—have been cited more frequently than any other Tribunal awards in international commercial and investment arbitration.[7] These awards have been primarily relied upon regarding expropriation issues (specifically, indirect expropriation and determining the point in time when expropriation occurs) and compensation standards in cases of expropriation. Naturally, with the significant growth in investment disputes, it is foreseeable that the Tribunal's awards have been cited in an increasing number of ICSID or other investment cases, whether *ad hoc* or institutional.

As a final point, it is important to emphasize, however, that the precedential value of the Tribunal's awards and decisions, as discussed, does not imply that all Tribunal awards are necessarily regarded as equally persuasive precedent. The value of each award must be assessed by carefully considering the subject matter, the substantive framework in which the dispute arose, and the law or legal principles applied by the Tribunal, considering its broad discretion. In some cases, an award may offer limited guidance due to differences in legal context or factual circumstances. Nonetheless, when viewed as a body of jurisprudence, the IUSCT's awards clearly possess the attributes of persuasive precedent.

The present study demonstrates that the awards of the IUSCT constitute a valuable repository of decisions with *persuasive precedential value* for similar cases—namely, a considerable number of international investment and commercial disputes. This resource should be more actively engaged with—both in academia and in practice—and its neglect would be a serious missed opportunity.

1 The Germany-Bulgaria BIT (1986) is widely regarded as the first bilateral investment treaty to incorporate the UNCITRAL Arbitration Rules as a procedural framework for investor-state disputes.
2 Christopher S Gibson and Christopher R Drahozal, 'Iran-United States Claims Tribunal Precedent in Investor-State Arbitration' (2006) 23 Journal of International Arbitration 521, 540 ff.
3 *Amoco International Finance Corp v Iran* (1987) 15 Iran-US CTR 189.
4 *Phillips Petroleum Co Iran v Iran* (1989) 21 Iran-US CTR 79.
5 *Starrett Housing Corp v Iran* (1983) 4 Iran-US CTR 122.
6 *Tippetts, Abbett, McCarthy, Stratton v TAMS-AFFA Consulting Engineers of Iran* (1984) 6 Iran-US CTR 219.
7 Gibson and Drahozal, Op. Cit. (2006) 540.

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