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Special Issue on the Iran-United States Claims Tribunal

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The Iranian Journal of International and Comparative Law (IJICL) is a bi-annual, open access, English language and double-blind peer-reviewed law journal. IJICL explores all issues at the forefront of *international and comparative law*, including International Law of Armed Conflicts, International Human Rights Law, International Criminal Law and criminology, International Economic Law, International Trade Law, international Treaty Law, Law of International Organizations, International Intellectual Property Law, International Dispute Resolutions, International Law of the Sea, International Aerospace Law, International Energy Law, International Environmental Law, International Labor Law, The law of state responsibility, Private International Law, Philosophy of International Law, Islamic International Law, and Comparative Studies of Legal Issues in Different Legal systems. The journal also intends to cover diverse Iranian legal issues with international aspects, ranging from the laws, regulations and legal procedures with international dimensions, to judicial rulings of the Islamic Republic of Iran; and to critique the works of international law authors in all issues of the journal. Although Iran-related topics are a priority, the journal welcomes any articles on a variety of topics in international law or comparative law from around the world.

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Editor's Note

The obligation of states to settle international disputes by peaceful means and the prohibition of the threat or use of force in international relations are complementary principles enshrined in the Charter of the United Nations, specifically Articles 2(3) and 2(4). These core norms affirm the role of arbitration as the most important mechanism for the peaceful resolution of disputes and the maintenance of international order. Within this normative framework, the Iran–United States Claims Tribunal stands out for its substantial jurisprudential contributions to investor–state arbitration and the broader field of interstate dispute resolution.

The Iran-United States Claims Tribunal is one of the most, if not the most, important institutions in the history of international arbitration, and is considered the longest-running interstate arbitration tribunal in modern times. Established after the 1979 Islamic Revolution, the Tribunal was created to address complex disputes arising from the severance of diplomatic and economic relations between Iran and the United States. Extensive contractual and investment relations between the two countries before the revolution, had led to numerous legal disputes that remained unresolved in the wake of political situation. The seizure of the United States embassy in Tehran exacerbated the crisis and prompted the need for a formal mechanism for dispute resolution. The 1981 Algiers Agreements between Islamic Republic of Iran and the U.S with the mediation of Algeria and the subsequent establishment of the Tribunal demonstrate how the two countries were able to transform a diplomatic impasse into a structured legal process—an early demonstration of the capacity of international law to resolve disputes at the states level.

Over the course of more than four decades, the Tribunal has adjudicated about 4000 claims, making it one of the most active and influential institutions in the field of international arbitration. Its jurisprudence has significantly contributed to the evolution of international investment law, law of state responsibility, and procedural developments in arbitration. The Tribunal's decisions have frequently served as persuasive authority for subsequent arbitral bodies, thereby enriching

the body of international legal precedent and shaping standards of practice in investor–state dispute settlement.

The present issue of our journal is devoted to exploring the legal and institutional legacy of the Iran–U.S. Claims Tribunal. It features selected contributions from the International Arbitration Conference held in November 2024, which brought together leading scholars, practitioners, and students. These contributions examine the Tribunal's lasting impact on international arbitration from doctrinal, procedural, and contemporary perspectives. The issue includes the following sections:

1. Doctrinal Legacy
   - Mir-Hossein Abedian, Current Tribunal Judge and former Justice of Iran's Supreme Court Judge, examines the precedential weight of the Tribunal's awards, focusing on how they have been invoked as persuasive authority in ICSID, PCA, and ad hoc arbitral proceedings. His empirical study finds that 44.7% of ICSID awards referenced Tribunal precedents, with Amoco International and Starrett Housing cited most frequently.
   - Professor Seyed Ghasem Zamani analyzes the Tribunal's contributions to the development of the law of state responsibility, particularly in areas such as attribution of conduct, force majeure, and indirect expropriation—doctrinal innovations that have since influenced the jurisprudence of the UN Compensation Commission and ICSID tribunals.

2. Procedural Innovations
   - Associate professor Hamid Reza Oloumi Yazdi, former Tribunal Judge, critiques the proposing reforms to deter bad-faith withdrawals. He recommends empowering appointing authorities to ensure continuity in contentious proceedings.
   - Professor Jamal Seifi, current Tribunal Judge, reflects on the Tribunal's jurisprudence on arbitration procedure, emphasizing how its hybrid procedural model bridged civil and common law traditions. He highlights Iran's eventual adoption of practices such as cross-examination and written witness statements.

3. Contemporary Relevance
   - Articles on evidence and burden of proof and good faith in arbitration evaluate the Tribunal's fact-finding methodology, offering analytical insights applicable to disputes involving economic sanctions or diplomatic disengagement.
   - Contributions on res judicata and interpretive awards explore the Tribunal's nuanced handling of finality, contractual ambiguity, and treaty interpretation—issues with continuing relevance for modern investment treaty arbitration.

This issue offers a rare combination of firsthand perspectives and critical academic analysis, forming a comprehensive reference work on the jurisprudential and procedural legacy of the Iran–U.S. Claims Tribunal. The contributions from Tribunal judges and legal scholars

effectively link theoretical inquiry with practical experience, ensuring both academic rigor and applied relevance.

We are grateful to the conference organizers, peer reviewers, and contributing authors—particularly those with direct experience at the Tribunal—for their insightful and practice-informed contributions. The journal remains committed to fostering dialogue on contemporary developments in international law, and it welcomes future submissions in the fields of arbitration, investment law, and comparative legal studies.

The Tribunal's legacy continues to serve as a valuable reference point for addressing future challenges in international dispute resolution. We encourage our readers to engage critically with the materials presented and to build upon the analytical foundations offered by this collection.

Mostafa Fazaeli
Editor in chief

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General Observations on the Iran-United States Claims Tribunal and a Review of the Tribunal's Jurisprudence on Arbitration Procedure*

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ABSTRACT

This article aims to address theoretical and practical issues arising from the author's "lived experience" in dealing with the developments and intricacies of international arbitration, with a particular focus on experiences related to the Iran-United States Claims Tribunal. These discussions are presented in two parts. The first part consists of general observations that emphasize, on the one hand, the unique importance of the Tribunal in contributing to the maintenance of international peace and security through the peaceful resolution of disputes between two predominantly adversarial states. The Tribunal is referred to as a symbolic institution embodying the "ideal of arbitration for peace." On the other hand, this section highlights the hybrid and multifaceted nature of the Tribunal and its manifestations, noting that the Iran-United States Claims Tribunal is a multifunctional institution. It simultaneously serves as an international commercial arbitration tribunal, an international investment arbitration tribunal, a tribunal with jurisdiction over contractual disputes between two states, and a public international law tribunal. This multifaceted nature allows its awards to be examined from various perspectives. The second part primarily examines the Tribunal's jurisprudence from the perspective of the interaction between distinct legal cultures involved in international arbitration and the mutual influence of their legal backgrounds on the arbitration process. This selection is made with consideration of the judicial issues prevalent in Iran and seeks to highlight the Tribunal's unparalleled role in deepening the legal knowledge and practical skills of Iranian lawyers in dealing with international claims. In this regard, issues such as the non-requirement of power of attorney for legal representatives, the admissibility of written witness testimony (affidavit) by the parties, the submission of written witness testimony and oral testimony by individuals with a personal interest in the case or a master-servant relationship with the parties, the ability to cross-examine witnesses during hearings regarding the content and veracity of their testimony, and the standard applied by the Tribunal for meeting the burden of proof and the burden of production are all examined in light of the Tribunal's various rulings.

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Introduction

The following is the full version of a lecture delivered by the author on the inaugural day of the "International Arbitration Conference with an Emphasis on the Jurisprudence of the Iran-United States Claims Tribunal," held on November 28, 2023. Unfortunately, due to the author's presence in The Hague, it was not possible to deliver the lecture in person, and due to time constraints, the final section on "issues related to the standards applied by the Tribunal for meeting the burden of proof and the burden of production" was presented in a very concise manner. Taking this opportunity, the full text of this section is now made available to interested readers. In any case, the primary objective of this lecture is to address theoretical and practical issues arising from the author's "lived experience" in dealing with the developments and intricacies of international arbitration, with a particular focus on experiences related to the Iran-United States Claims Tribunal.

At the outset, let me reiterate that the reason for dedicating the first part of this discussion to general observations on the Iran-United States Claims Tribunal is to re-emphasize the Tribunal's unique importance in contributing to the maintenance of international peace and security through the peaceful resolution of disputes between its two founding states by means of international arbitration. This is a topic that I have previously addressed in my remarks at international forums, including a lecture delivered in 2013 at the Peace Palace on the occasion of the centennial anniversary of its inauguration, the written report of which was published in Issue 24 of the Iranian Legal Research Journal in 2013.[1] In this section, I will elaborate on two general observations regarding the Iran-United States Claims Tribunal. The first observation pertains to the overall context of the Tribunal's activities as one of the most significant manifestations of the realization of the ideal of "arbitration for peace." The second observation concerns the hybrid and multifaceted nature of the Tribunal and its manifestations.

The second part of the discussion focuses on selected aspects of the Tribunal's jurisprudence on arbitration procedure. This selection is primarily made from the perspective of the interaction between distinct legal cultures involved in international arbitration and the mutual influence of their legal backgrounds on the arbitration process. This selection is made with consideration of the judicial issues prevalent in Iran and seeks to highlight the Tribunal's unparalleled role in deepening the legal knowledge and practical skills of Iranian lawyers in dealing with

1 Seyed Jamal Seifi, 'Arbitration and the Peaceful Settlement of Disputes' [2013] Legal Research Journal 12(24), 6–19.

international claims. This is also a topic that I have addressed in my previous writings, including an article published in Issue 35 (2023) of the Journal of Comparative Studies in Islamic and Western Law.[1]

1. Part One: General Observations on the Iran-United States Claims Tribunal

1.1. Observation One: The Tribunal as a Key Manifestation of the Ideal of "Arbitration for Peace"

The idea that recourse to arbitration by states can lead to the peaceful resolution of international disputes and, consequently, prevent the use of force in interstate relations, is an ideal that led to the establishment of the Permanent Court of Arbitration in 1899. As Article 1 of the 1899 Hague Convention on the Pacific Settlement of International Disputes states, "With a view to obviating, as far as possible, recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to ensure the pacific settlement of international differences."

Indeed, it is for this reason that Judge Bockstiegel, who served as President of the Tribunal from 1984 to 1988, noted in a book chapter that since its establishment in 1981, the Tribunal has always been at the center of attention beyond its legal literature and purely legal activities, particularly due to its operation in a highly politically charged environment. The Tribunal was established to resolve a crisis that arose following the hostage-taking of American diplomats in Tehran and, in response, the freezing of Iranian assets by the U.S. government.[2] In describing the nature of this crisis, Mr. Roberts Owen, Legal Adviser to the U.S. Department of State and one of the American negotiators in the process leading to the Algiers Accords, used the term "Mutual Taking of Hostages."[3] Anyway, in this brief overview, I will limit myself to noting that, given the violation of Iran's sovereignty and territorial integrity in the failed Tabas Operation, which occurred just five months after the hostage crisis, the failure to resolve this crisis peacefully through the Algiers Accords, which led to the establishment of the Tribunal, would have resulted in even more severe consequences. In any event, scholars such as Judge Bruno Simma have described the establishment of the Iran-United States Claims Tribunal in 1981 as a successful experience through which the parties, despite viewing each other as adversaries, chose to adhere to the law and engage with each other in a systematic manner rather than resorting to war—a lesson that should inspire adversarial parties worldwide in the current context.[4]

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1 Seyed Jamal Seifi, 'Cultural Diversity of Arbitrators and Judges in International Arbitration and Judicial Proceedings' [2023] Comparative Studies in Islamic and Western Law 10(1), 191–214. See also: Jamal Seifi, 'Globalization of International Arbitration: Trends and Implications' in Christoph Benike and Stephan Huber (eds), *National, International, Transnational: Harmonischer Drieklang im Recht* (Verlag Ernest und Werner Gieseking Bielefeld GmbH 2020) 1571–1578.; Jamal Seifi, 'Legitimacy of Investor-State Arbitration: Addressing Development Bias Among International Arbitrators' in Freya Baetens (ed), *Identity and Diversity on the International Bench: Who is the Judge?* (OUP 2020) ch 9, 165–178.

2 Karl-Heinz Bockstiegel, 'The Iran-United States Claims Tribunal: A Unique Example of Arbitrating for Peace' in Ulf Franke, Annette Magnusson, and others (eds), *Arbitrating for Peace: How Arbitration Made a Difference* (Kluwer Law International 2016) 92.

3 See, Roberts B Owen, 'The Final Negotiation and Release in Algiers' in Warren Christopher and Paul H Kreisberg (eds), *American Hostages in Iran: The Conduct of a Crisis* (Yale University Press 1985) 299–300: "*In one sense the situation was like a mutual taking of hostages*. It was as though, in April 1980, when President Carter decided to sever diplomatic relations with Iran and expel all Iranian diplomats from the United States, he had decided instead to seize those diplomats and hold them in custody pending release of our fifty-two nationals." (emphasis added)

4 See, Bruno Simma and Jan Ortgies, 'The Iran-United States Claims Tribunal' in Chiara Giorgetti and others (eds), *Research*

1.2. Observation Two: The Hybrid and Multifaceted Nature of the Tribunal

The hybrid nature of the Iran-United States Claims Tribunal stems from the fact that it simultaneously functions as an international commercial arbitration tribunal, an international investment arbitration tribunal, a tribunal with jurisdiction over contractual disputes between two states, a public international law tribunal, and an interpretive arbitration tribunal (through its Board). Indeed, it is for this reason that the Tribunal's awards can be examined from various perspectives. It is worth noting that all the functions of the Tribunal are enumerated in Article 2 of the Claims Settlement Declaration. With respect to the first two functions, paragraph 1 of Article 2 of the Declaration states:

> *" 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, transaetion or occurrence that constitutes the subject matter of that national's claim, if such claims and counter-claims are outstanding on the date of this Agreement,... , 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."*

For instance, the most significant feature related to the Tribunal's public international law dimension can be found in Article 1 of the General Declaration, which, under the title "Non-Intervention in Iranian Affairs," states: "The United States pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs." It is evident for scholars that the text of this article was, in fact, a modified version of a commitment demanded by the Islamic Consultative Assembly for the resolution of the hostage crisis, as the Assembly's proposed commitment, although solely prospective, was drafted in a manner that implied validation of prior U.S. interventions in Iran's internal affairs. Thus, Article 1 of the "Four Conditions of the Islamic Consultative Assembly for the Resolution of the Hostage Crisis," dated November 2, 1980, stated:

> *"Since the U.S. government has in the past repeatedly intervened in Iran's internal affairs through various political and military means, it must therefore pledge and guarantee that henceforth it will not intervene, directly or indirectly, politically or militarily, in the internal affairs of the Islamic Republic of Iran."*

Ultimately, the text of Article 1 of the General Declaration, containing the U.S. commitment to non-intervention in Iran's internal affairs, was included in the General Declaration as set forth above. It is worth noting that in 1996, Iran filed Case A/30 before the Tribunal, alleging a violation of the principle of non-intervention by the United States. However, after the exchange of pleadings, Iran did not insist on setting a date for the hearing, and the case remains pending before the Tribunal.

It should be noted that while the provisions of the Algiers Accords played a significant role

Handbook on International Claims Commissions (Edward Elgar Publishing 2023) ch 4, 75–89, 89.

in creating a framework for the adjudication and resolution of past disputes, such as financial, banking, commercial, and contractual claims, the provisions addressing future disputes, such as paragraph 1 of the General Declaration, have thus far had little impact on alleviating tensions or resolving the escalating political and military crises between the two states.

Moreover, with respect to the Tribunal's investment law dimension, as one scholar has noted, the Claims Settlement Declaration can be considered, in this regard, a bilateral investment treaty focused on the past. This characterization is used because, unlike the usual practice in investment protection treaties, which anticipate future disputes, the Declaration did not grant the Tribunal jurisdiction over future disputes but only authorized it to adjudicate pre-existing disputes.[1]

Indeed, due to this hybrid nature, Article 5 of the Claims Settlement Declaration, which pertains to the applicable law, was drafted to cover a much broader scope than the standard text of the UNCITRAL Rules:

> *" 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."*

For this reason, Article 33 of the Tribunal's Rules of Procedure, which concerns the applicable law, replaced paragraph 1 of Article 33 of the UNCITRAL Rules with the provisions of Article 5 of the Claims Settlement Declaration. By way of comparison, it is worth noting that Article 33 of the UNCITRAL Rules, concerning the applicable law, in paragraph 1, employs the standard formula for international commercial arbitration:

> *"The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable."*

It should be added that the final part of Article 5 of the Declaration is largely drawn from paragraph 3 of Article 33, which states: "In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction." In any case, due to time constraints, I will avoid delving into other aspects of the Tribunal's activities and proceed to the second part of the discussion.

2. Part Two: A Review of the Tribunal's Jurisprudence on Arbitration Procedure

As an introduction, it should be noted that the Iran-United States Claims Tribunal began its operations not long after the adoption of the UNCITRAL Arbitration Rules in 1976. As a result, many of the issues that arose in the course of the Tribunal's proceedings were not explicitly

1 David D Caron, 'The Iran-U.S. Claims Tribunal and Investment Arbitration: Understanding the Claims Settlement Declaration as a Retrospective BIT' in Christopher Drahozal and Christopher Gibson (eds), *The Iran-U.S. Claims Tribunal at 25: The Cases Everyone Needs to Know for Investor-State & International Arbitration* (OUP 2007) 375–376.

addressed in those rules. In this regard, the Tribunal's activities significantly enriched the UNCITRAL Rules. However, in this brief review, I will focus only on certain practices relevant to Iranian law.

2.1. The Defense of Failure to Submit or Delay in Submitting a Power of Attorney

In addressing this issue, it is fitting to recall the late Professor Dr. Jafar Niaki. In a meeting with him in the mid-1980s, the late professor, while emphasizing the need for training and increasing the experience of Iranian lawyers, expressed some frustration that the lawyers representing Iranian entities in cases before the Tribunal (though not the Iranian legal advisers of the Legal Services Office at the time) were defending their cases in the same manner as they would before Iranian courts, without considering the requirements of international arbitration. For example, they would raise objections such as why the opposing party's lawyer had not attached a power of attorney to the case file. The late professor, quoting Mr. Pierre Bellet, President of Chamber Two of the Tribunal and former President of the French Court of Cassation, noted that international arbitration has its own flexibility and specific requirements, and the procedural rules of one party's domestic legal system are not necessarily applicable.

In many cases, particularly in the Tribunal's first decade of operation, Iranian respondents' lawyers, while defending the merits of the case, sought to raise procedural objections and obstacles based on the tactics commonly used in Iran and relying on their own legal culture. As a result, objections such as the failure to submit a power of attorney or delay in submitting a power of attorney (within the framework of the defense of lack of authority) were very common. For example, in the well-known "Starrett" case, which concerned a project to construct apartment complexes, one of the objections raised by the Iranian respondents was that the claimant's lawyer had submitted the power of attorney in April 1982, while the claimant's first memorial, signed by the same lawyer, had been filed with the Tribunal on November 9, 1981, and in any case, the deadline for filing claims with the Tribunal was only until January 19, 1982.[1] On this basis, the second objection raised by the respondents was that two other lawyers who had joined the claimant's lead lawyer during the pre-hearing conference and participated in the discussions lacked authority.

In response to the first objection, Chamber One of the Tribunal, in its Order of December 8, 1982, initially noted that the contents of the submitted power of attorney indicated that the lawyer had been authorized to act continuously from the outset of the case. Subsequently, Chamber One stated that the Tribunal's Rules of Procedure do not explicitly require the submission of a power of attorney, whether before the January 19, 1982 deadline for filing claims or thereafter. With respect to the second objection, the main flaw in the defense of lack of authority regarding the two other lawyers assisting the claimant's lead lawyer was that the names and titles of these individuals had been listed on the last page of the claimant's first memorial (filed on November 9, 1981) under the heading "Members of the Claimant's Counsel." In any event, Chamber One, in rejecting the second objection, also noted that the Tribunal's Rules of Procedure do

1 *Starrett Housing Corporation v The Government of the Islamic Republic of Iran and others*, Case No 24, Order, 8 December 1982, 1 Iran-US CTR 386.

not contain any provision prohibiting the lead lawyers of the parties from using assistants in providing legal services related to the case.

2.2. Submission of Written Witness Testimony Prior to the Tribunal's Hearings

One issue that Iranian respondents faced in the early years of the Tribunal's operation was the extensive use by American claimants of written witness testimonies prepared before relevant authorities, known as "affidavits," and their attachment to the written submissions in the case file at the time of filing the written pleadings. These written witness testimonies must be prepared and certified before competent authorities, which is why the Tribunal's translation department has used the term "Notarized Affidavit" for them. Naturally, the probative value of these written witness testimonies depends on various considerations, including their consistency with the circumstances of the case and, in particular, their consistency with the documents in the case file, which will be discussed in the next section regarding how the Tribunal, following the common law system, applies a substantive standard to assess their probative value. At the same time, as provided in Article 25 of the Tribunal's Rules of Procedure, it is also possible to give "oral testimony" directly (without prior submission of a written witness testimony) during the hearing. In this regard, paragraph 2 of Article 25 of the Tribunal's Rules of Procedure states that each party must provide the Tribunal and the other party with the names and addresses of the witnesses and the subject of their testimony in writing at least thirty days before the date of the hearing.

2.3. Submission of Written Witness Testimony or Oral Testimony by Individuals with a Personal Interest in the Case

The inadmissibility of testimony by individuals with a personal interest in the case is a well-established rule in Iranian law. Article 1313 of the Iranian Civil Code provides that the testimony of five categories of persons is inadmissible, including "a person who has a personal interest in the case." As Professor Sheikh Nia has explained in his book "Evidence in Litigation," the rationale for this limitation is that "when a person has an interest in the matter of testimony, there is a possibility that they will refrain from telling the truth, and therefore their testimony cannot be relied upon to reveal the truth."[1] Thus, it was not surprising that Iranian respondents strongly objected to the acceptance of written witness testimony by interested parties prior to the hearing or their oral testimony during the hearing. It should be added that even before the establishment of the Tribunal, Professor Sandifer, in the second edition of his book on evidence before international tribunals, noted that the nature of the activities of international tribunals, in which claimants often face the problem of lack of access to evidence without any fault on their part and usually have access only to evidence derived from interested parties, requires that the rule of inadmissibility of testimony by interested claimants, which exists in some legal systems, not be applied, as adherence to such a rule would be contrary to fairness and unwarranted.[2]

1 Amir Hossein Sheikh Nia, *Evidence in Litigation* (1st edn, Sahami Publishing Company 1994) 121.

2 Durward V Sandifer, *Evidence before International Tribunals* (rev edn, University Press of Virginia 1975) 364: "A rule denying any weight to the testimony of interested parties or excluding it altogether may have some justification in municipal procedure, where other evidence will usually be available. … In international procedure, where the claimant through no fault of his own so frequently has no evidence except his own or that of parties intimately interested in the case upon which to base a claim for redress, such a rule is surely inequitable and unsound."

As we will see, the Tribunal, by preferring the substantive standard of the *common law* legal system over the procedural standard of *civil law* legal systems, particularly Iranian law, instead of prohibiting the submission of written witness testimony or oral testimony by interested parties, accepted such evidence and, by applying a substantive standard, including by providing the opportunity for cross-examination of a party's witnesses by the opposing party's lawyers to reveal any inconsistencies between the contents of the witness testimony and other evidence, enabled the assessment of their probative value.

Moreover, particularly in the early years of the Tribunal's operation, in response to objections by Iranian respondents, the Tribunal's chambers adopted the practice that in cases where individuals had a personal interest in the case, instead of giving formal testimony before the Tribunal, they could make "statements" regarding the substantive aspects of the claimant's claims during the hearing. Following this distinction, in some cases these individuals were referred to as "claimant-witnesses." For example, in the case of "Allen Craig v. Ministry of Energy, MAHAB Company, and Khuzestan Water and Power Authority,"[1] his statements as a consulting engineer regarding the details of the engineering services he had provided, the reasons he had been forced to leave Iran before the end of the contract period, and the measures taken to mitigate damages were heard by Chamber Three of the Tribunal. However, it should be added that, as some common law scholars have noted, there is little practical difference between distinguishing between giving testimony and making statements, and in reality, what matters is the very acceptance of the submission of written witness testimony or oral testimony by interested parties. In this regard, the analysis of the late Professor Michel Virally on the need to disregard the limitations of national legal systems in accepting evidence in international proceedings is particularly significant. His analysis (contained in an internal Tribunal memorandum in 1988, which was subsequently included in the 1992 award in the case of "W Jack Buckamier v. The Islamic Republic of Iran, Isiran/Army and others") and which was cited in subsequent Tribunal decisions, contains noteworthy points, which I will briefly outline below. Judge Virally made the following observations:

> *" The virtual absence of documentary support for Mr. Buckamier's claim raises the issue what the probative value is of the Claimant's affidavit. The importance of this question makes it appropriate to elaborate on the considerations the Tribunal must take into account in weighing this kind of evidence. In a memorandum dated 17 February 1988 the Tribunal's distinguished former member and Chairman of this Chamber, the late Professor Virally, expressed these considerations as follows. The Tribunal has often been presented with notarized affidavits or oral testimony of claimants or their employees. [Rare] are the cases where such an issue does not arise. The probative value of such written or oral declarations is usually hotly debated between the parties, each of them relying on the pecul[i]arities of its own judicial system. The U.S. parties insist that such evidence must be recognized with full probative value, as would be the case before U.S. courts. The Iranian parties contend that such declarations are not admissible as evidence under Iranian law, as*

1 *Alain Craig v Ministry of Energy of Iran and others*, Award No 71-346-3, 2 September 1983, 3 Iran-US CTR 280.

in many other systems of law, because they emanate from persons whose interests are at stake in the proceedings, or who are, or were, dependent upon the claimants.

.....

As an international Tribunal established by agreement between two sovereign States, the Tribunal cannot, in the field of evidence as in any other field, make the domestic rules or judicial practices of one party prevail over the rules and practices of the other, in so far as such rules or practices do not coincide with those generally accepted by international Tribunals. In this context, it can be observed that declarations by the parties, or employees of the parties, in the form of notarized affidavits or oral testimony, are often submitted as evidence before such Tribunals. They are usually accepted, but, apparently, their probative value is evaluated cautiously, in a manner generally comparable to the attitude of this Tribunal as just described."[1]

Ultimately, in the case at hand, Chamber Three of the Tribunal found the claimant's written witness testimony regarding the claim of payment insufficiently probative and, as a result, dismissed the claimant's $4,500 claim against Bank Mellat. In any event, the contents of Judge Virally's note, after being reflected in the Buckamier award, are considered to reflect the Tribunal's established practice regarding the acceptance of written witness testimony and testimony by interested parties.

2.4. Cross-Examination of the Opposing Party's Witness Regarding the Content of Their Written Witness Testimony

In previous discussions, it was noted that the preference for the *common law* approach to the admissibility of written witness testimony by interested parties over the approach of *civil law*, which impose varying degrees of prohibitions and limitations in this regard, ultimately amounts to a preference for a substantive standard for determining the probative value of written witness testimony over the procedural standard favored by civil law systems. One of the most effective ways to assess the reliability of the contents of written witness testimonies submitted to the Tribunal by interested parties is the legal mechanism of "cross-examination." Thus, by providing the opportunity to cross-examine a witness who, after submitting a written witness testimony during the exchange of pleadings, is now present before the Tribunal, the opposing party's lawyer is enabled to ask appropriate questions aimed at revealing any inconsistencies between the contents of the written witness testimony and other evidence, thereby undermining the probative value of the written witness testimony. Indeed, the legal mechanism of "cross-examination" has become so important in international arbitration practice that scholars have published articles aimed at teaching the practical aspects of this technique.[2] The audience for some of these articles is particularly lawyers trained in civil law systems, who typically have little experience in their professional backgrounds with techniques related to cross-examining opposing witnesses.[3]

1 *W Jack Bukamier v The Islamic Republic of Iran and others*, Award No 528-941-3, 6 March 1992, 28 Iran-US CTR 307, para. 67.

2 See, Rachael D Kent, 'An Introduction to Cross-Examining Witnesses in International Arbitration' (2006) 3(2) Transnational Dispute Management 1–9.

3 See, Philippe Pinsolle, 'Cross-Examination of Fact Witnesses: The Civil Law Perspective' in Stephen Jagusch KC and others (eds), *The Guide to Advocacy* (6th edn, Global Arbitration Review 2024) 105–118.

2.5. Issues Related to the Standard Applied by the Tribunal for Meeting the Burden of Proof and the Burden of Production

Another area in which participation in the proceedings of the Iran-United States Claims Tribunal enriched the legal knowledge of Iranian lawyers was their exposure to a different standard used in the common law system for determining the satisfaction of the burden of proof. Specifically, instead of the standard of the judge's personal conviction, which prevails in civil law systems, the common law system applies the standard of the balance of probabilities, and if, in weighing the probabilities between the claimant's position and the respondent's position, in light of the evidence presented, one party's position appears more probable, the judge will rule in favor of that party.[1] In British legal literature, the term "balance of probabilities" is used to refer to this process.[2] For example, the Investment Arbitration Tribunal in the case brought by the Dutch company Rompetrol against Romania stated that it would, in principle, apply the "balance of probabilities" rule as the standard of proof for factual issues in dispute:

> *" Therefore the Tribunal, while applying the normal rule of the 'balance of probabilities' as the standard appropriate to the generality of the factual issues before it, will where necessary adopt a more nuanced approach and will decide in each discrete instance whether an allegation of seriously wrongful conduct by a Romanian state official at either the administrative or policymaking level has been proved on the basis of the entire body of direct and indirect evidence before it."*[3]

Moreover, the concept of "reversal of the burden of proof" in Iranian law (as in other civil law systems) is used only in cases where the respondent alleges a fact that requires proof (such as a claim of payment of a promissory note). As Professor Sheikh Nia has explained, "the respondent, in making such a claim, is considered a claimant and must prove it with evidence. In this way, the burden of proof is reversed, and the positions of the claimant and the respondent are switched."[4] In this regard, Article 1257 of the Iranian Civil Code provides that "anyone who claims a right must prove it, and the respondent, if in defense alleges a fact that requires proof, must prove it." However, in the common law system, the shifting of the burden of proof is part of the normal process of adjudicating a case. Specifically, the claimant must initially establish a *prima facie* case by presenting evidence that their claim is not baseless. After this preliminary stage, and upon the satisfaction of the "burden of production" or "initial burden of proof" (as termed by the Tribunal's translation department) by the claimant, the respondent is required to present evidence, and ultimately, a ruling is issued based on the weighing of probabilities. Otherwise, the respondent, in defense, will simply submits that there is no case to answer, without presenting any counter-evidence.

For this reason, in the common law system, to refer to the concept of "burden of proof"

1 Neil Orloff and Jerry Stedinger, 'A Framework for Evaluating the Preponderance-of-the-Evidence Standard' (1983) 131 University of Pennsylvania Law Review 1159–1174, 1159.

2 Balance of Probabilities (British formulation); Preponderance of the Evidence (American formulation).

3 *The Rompetrol Group N.V. v Romania*, ICSID Case No ARB/06/3, Award, 6 May 2013, para. 183.

4 Sheikh Nia, *Evidence in Litigation* (1994) 45; He further noted that the provisions of **Article 1257 of the Iranian Civil Code**, as cited in here, reflect the provisions of **Article 1315 of the French Civil Code**. These provisions exhibit greater complexity and richness compared to the traditional principle of "the burden of proof lies on the claimant."

in the strict sense (the burden of proof as understood in civil law systems), the terms "burden of persuasion," "legal burden of proof" (or simply "legal burden"), or "ultimate burden of proof" are used. In light of the aforementioned, it is clear that the burden of proof in the strict sense is never shifted, and the reversal of the burden of proof occurs only in the context of the claimant's initial proof of their claim (the burden of production), which requires the respondent to present evidence in turn.[1] Thus, the Investment Arbitration Tribunal in the "Apotex" case emphasized the need to distinguish between the persuasive burden or legal burden (which is never shifted) and the burden of production (which may shift from one party to the other during the proceedings, depending on the state of the evidence presented).[2]

Anyway, in numerous instances in the Tribunal's practice, we encounter the requirement of initial and prima facie proof of the claimant's claim. In particular, in two cases that we will briefly examine, due to the failure to satisfy the "initial burden of proof" and the claimant's inability to establish a prima facie case, the burden of proof was not shifted from the claimant to the respondent.

In the "Malek" case, the claim brought by the claimant, Mr. Reza Said Malek (a dual Iran and the United States national), against the Government of the Islamic Republic of Iran, concerned the alleged expropriation of his real estate located in Arak (agricultural lands) and Tehran (Shemiran), as well as his shares in Bank Mellat (formerly the Bank of Tehran) and the Bank of Industry and Mines (formerly the Bank of Industrial Development and Mining of Iran). Since the claimant had been residing in the United States since 1962 and had been continuously working there as a physician, the Tribunal, in its Interim Award of June 23, 1988, found that his dominant and effective nationality from November 5, 1980 (the date he acquired U.S. nationality) to January 19, 1981 (the date of the signing of the Algiers Accords, which is the benchmark for the Tribunal's jurisdiction) was U.S. nationality, and therefore, the Tribunal had jurisdiction over the claim.

On the merits, the claimant's claim was that during the aforementioned period, leading up to the signing of the Algiers Accords (January 19, 1981), the alleged expropriation of his properties had occurred as a result of actions by Iranian state authorities and paramilitary forces affiliated with the Iranian State. With respect to the part of the claim concerning the expropriation of bank shares, the Tribunal, based on considerations including the nationalization of banks prior to the claimant's acquisition of U.S. nationality on November 5, 1980, did not find that it had jurisdiction. With respect to the properties in Tehran, and in particular the residential property in Shemiran (the claimant's family home, which had been transferred to him as an inheritance following his father's death) and the adjacent property, the claimant's claim was that, among other things, due to the forced eviction of his mother from the residential property by Iranian state authorities and paramilitary forces affiliated with the Iranian State in early December 1980, it was clear that the expropriation of this property had occurred within the jurisdictional period relevant to the Tribunal (between November 5, 1980 and January 19, 1981), and therefore, there

1 See, Richard Garnett, 'Demystifying the Burden of Proof in International Arbitration' in Franco Ferrari and Friedrich Rosenfeld (eds), *Handbook of Evidence in International Commercial Arbitration: Key Issues and Concepts* (Kluwer Law International 2022) ch 4, 67–86, 70.

2 *Apotex Holding Inc and Apotex Inc v United States of America*, ICSID Case No ARB(AF)/12/1, Award, 25 August 2014, para. 8.8.

was no bar to the Tribunal's jurisdiction over this part of the claim. The Tribunal stated that with respect to the residential property in Shemiran, apart from one written document whose authenticity was seriously doubted, the claimant's claim that the expropriation and eviction of his mother from the property had occurred within the jurisdictional period relevant to the Tribunal, as outlined above, was based solely on seven written witness testimonies (and the oral testimony of one witness), and counter-witness testimonies had also been submitted by the respondent. Anyway, the Tribunal initially, in paragraph 111 of the Award, regarding the need for the claimant to satisfy the "initial burden of proof" before the burden of proof could be shifted to the respondent, stated:

> *"[T]he Tribunal believes the Claim for the Shemiran Properties is best decided by reference to Article 24, paragraph 1 of the Tribunal Rules according to which "[e]ach party shall have the burden of proving the facts relied on to support his claim or defence." It goes without saying that it is the Claimant who carries the initial burden of proving the facts upon which he relies. There is a point, however, at which the Claimant may be considered to have made a sufficient showing to shift the burden of proof to the Respondent."*[1]

What is noteworthy in the Tribunal's analysis is its common law-based interpretation of Article 24 of the Tribunal's Rules of Procedure and its reference to the need for the claimant to satisfy the "initial burden of proof" and the subsequent shifting of the burden of proof to the respondent. This is despite the fact that the provisions of paragraph 1 of Article 24 of the Tribunal's Rules are fully consistent with the rules of civil law systems. As noted earlier, in Iranian law, as in other civil law systems, the "burden of proof" is a unitary concept, and the distinction between the binary concepts of "initial" and "ultimate" burden of proof is unique to the common law system.

Subsequently, the Tribunal examined the probative value of the written witness testimonies submitted by the claimant's witnesses. The aim was to determine whether the claimant had been able to establish a prima facie case that the expropriation of the properties had occurred within the jurisdictional period relevant to the Tribunal (between November 5, 1980 and January 19, 1981). In assessing the probative value of the witness testimonies, the fact that the claimant had stated the alleged date of expropriation as February 28, 1981 in his statement of claim (which indicated that the claim had not arisen at the time of the signing of the Algiers Accords) had a significant negative impact. Ultimately, the Tribunal, in paragraph 123 of the Award, stated that, taking all factors into account, in light of the deficiencies in the claimant's presentation of evidence regarding the date the claim arose, and given the fundamental importance of this issue in light of the jurisdictional parameters set forth in the Partial Award, the Tribunal could not accept that the burden of proof regarding the need for the claim to have arisen (establishing unwarranted interference with the claimant's family home) between November 5, 1980 and January 19, 1981 had been shifted to the respondent. Therefore, with respect to the property in

1 *Reza Said Malek v Iran*, Award No 534-193-3, 11 August 1992, 28 Iran-US CTR 246, 287-288, para. 111.

Shemiran, the Tribunal, due to ambiguities about the existence of the claim at the time of the signing of the Algiers Accords, did not find that it had jurisdiction.[1]

Similarly, in the "Golshani" case, the claim brought by the claimant, Mr. Ebrahim Rahman Golshani (a dual national of Iran and the United States), against the Government of the Islamic Republic of Iran, concerned the alleged expropriation of his ownership interests in the Tehran Development and Renovation Company, as well as in other companies and properties. The claimant's claim was that, pursuant to a settlement agreement concluded between him and Mr. Rahman Golzar Shabestari on August 15, 1978, and in exchange for the payment of a settlement amount, he had become the owner of the properties at issue in the claim. In defense, the respondent's claim was that, due to Mr. Golshani's dual nationality, the settlement agreement in question, which had in fact been concluded several years after the stated date and in which it was merely stated that the settlement amount had been delivered to the settlor, was in fact a device to fraudulently create jurisdiction for the Tribunal to hear a claim by Mr. Golzar, who was the real party in interest.

Under the heading of the burden of proof, the Tribunal initially noted that "the claimant acknowledges that he bears the initial burden of proving the apparent authenticity of the settlement agreement. According to the claimant, once this is done, the burden of proving the falsity of the document shifts to the respondent."[2] Subsequently, the Tribunal, as in the "Malek" case, by providing a common law-based interpretation of Article 24 of the Tribunal's Rules of Procedure and referring to the need for the claimant to satisfy the "initial burden of proof," stated that despite the respondent's claim that the settlement agreement was forged, this would not relieve the claimant of the obligation to establish a prima facie case of the authenticity of the settlement agreement, and therefore, "it is first for the claimant to prove the apparent authenticity of the settlement agreement."[3] Subsequently, the Tribunal, taking into account considerations such as the claim that more than fourteen thousand apartments in the Ekbatan complex, along with many other properties, had been transferred pursuant to the settlement agreement in question, while merely stating that the settlement amount had been delivered to the settlor, stated that it was clear that this two-page document could not be considered an authentic and official document.[4]

Ultimately, the Tribunal examined the probative value of the written witness testimonies of Messrs. Golshani and Golzar and their oral testimony during the hearing in support of the authenticity of the settlement agreement. In the Tribunal's view, in light of the numerous inconsistencies in the witnesses' testimonies and statements regarding the date of the transfer, the motive for the transfer, the legal nature of the transfer, and the description of the settlement amount, it must be concluded that the claimant had not satisfied the initial burden of proving the apparent authenticity of the settlement agreement in question. Therefore, the Tribunal's final finding in paragraph 122 of the Award was as follows:

1 Ibid., 123.
2 *Abrahim Rahman Golshani v The Government of the Islamic Republic of Iran*, Award No 546-812-3, 2 March 1993, 28 Iran-US CTR 78, 92, para. 47.
3 Ibid., 49.
4 Ibid., 67-73.

> *" Taking into account all the considerations expressed in the foregoing, including TRC's statements made during the Paris Litigation, the Tribunal believes that the Deed and the affidavits of its signatories do not inspire the minimal degree of confidence in the Deed's authenticity required to shift the burden of proof to the Respondent. The Tribunal thus decides that the Claimant's presentation does not make out a prima facie case of authenticity and that, consequently, it need not address the question whether the Respondent has met its burden of proving that the Deed is a forgery."*[1]

Thus, the Tribunal dismissed the claim brought by the claimant, Mr. Ebrahim Rahman Golshani, for lack of evidence of ownership. In concluding this discussion, I hope that the combination of theoretical considerations, references to the awards of investment arbitration tribunals in the "Rompetrol" and "Apotex" cases, and in particular the case studies of the "Malek" and "Golshani" cases from the Tribunal's jurisprudence, could sufficiently communicate the subject matter within the limits of this lecture.

Conclusion

The above discussion of the differing views of the Iranian and American parties regarding certain aspects of the Tribunal's procedure primarily relates to the early years of the Tribunal's establishment and operation. Over time, and out of necessity, the Iranian parties came to understand that, in light of the Tribunal's practice and the principles and rules accepted in this practice, they should defend their claims accordingly. Today, Iranian parties also submit written witness testimonies, use cross-examination techniques, and, as appropriate, seek to prove their claims based on the balance of probabilities. However, it should be added that oral arguments and cross-examination of opposing witnesses are still conducted by foreign lawyers trained in the common law system, which, given the importance and complexity of the cases before the Tribunal, is entirely justified.

Finally, I hope that I have been able to some extent to highlight certain aspects of the Tribunal's performance at two different levels, both in terms of its contribution to the maintenance of international peace and security and in terms of its procedure.

1 Ibid., 122.

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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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The Role of the Iran-United States Claims Tribunal in the Development of the Law of State Responsibility

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ABSTRACT

The Iran-United States Claims Tribunal, established in 1981 as an arbitral body to resolve disputes between the Governments of Iran and the United States—as well as claims by their nationals against these States—has, by virtue of its mandate, played a pivotal role in the development of international law generally and the law of state responsibility in particular. In the absence of an international convention codifying the principles and rules of state responsibility, the Tribunal has drawn upon international judicial and arbitral precedents, as well as the United Nations International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts, to elucidate customary international law in key areas. These include the structure and function of the state, attribution of conduct, unlawful expulsions, nationalization and expropriation of property, compensation standards, and state succession in wrongful acts. Through its jurisprudence, the Tribunal has affirmed the customary nature of these rules and clarified ambiguities in their application.

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Introduction

The law of international state responsibility, despite efforts spanning approximately a century, remains uncodified. Neither the 1930 Hague Conference achieved any results in this regard,[1] nor has the United Nations International Law Commission, after nearly half a century of study and examination, progressed beyond the 2001 Draft Articles on the Responsibility of States for Internationally Wrongful Acts (the ARSIWA).[2] In this context, judicial institutions such as the International Court of Justice and arbitral bodies like the Iran-United States Claims Tribunal have effectively endorsed the findings of the International Law Commission by basing their judgments on these draft articles, while the Commission itself has relied on judicial and arbitral decisions to demonstrate the declaratory character of most of its conclusions.[3]

The Iran-United States Claims Tribunal (IUSCT), established in 1981, has been described as the most significant arbitral institution in history.[4] It represents one of the most ambitious and complex international claims adjudication programs ever implemented. The body of decisions rendered by the Tribunal constitutes the most important collection of international arbitral precedent, unmatched in its persuasive authority. The Tribunal's jurisprudence serves as an invaluable repository for arbitrators, judges, academics, and writers addressing matters including treaty interpretation, attribution of responsibility to states, nationality, exchange controls, unlawful expulsions, evidentiary procedures, interim measures, nationalization, expropriation and seizure of property, compensation standards, commercial valuation, force majeure, interest, currency conversion, arbitrator challenges, and commercial disputes.

A crucial consideration is that in the international legal system, unlike common law systems, judicial and arbitral decisions lack formal status as "precedent" and do not constitute part of positive law. International judicial and arbitral decisions possess only relative authority and are binding solely upon the parties to the particular case.

However, Article 38 of the ICJ Statute, while preserving the limitation imposed by Article

1 Seyed Jamal Seifi, *International Responsibility Law: Discourses on State Responsibility* (2nd edn, Shahre Danesh Publications 2022) 2122-.

2 Read more: James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (CUP 2002).

3 Marija Dordeska, 'The Process of International Law-Making: The Relationship between the International Court of Justice and the International Law Commission' (2015) 15(1) *International and Comparative Law Review*, 7-57.

4 Richard Lillich (ed), *Iran-United States Claims Tribunal 1981–1983* (University Press of Virginia 1984), i, vii.

59 (the principle of relative authority of the Court's judgments), recognizes judicial decisions as subsidiary means for determining rules of law. This recognition has enabled the ICJ not only to function as a global court in identifying legal rules and declaring principles of law, but also to reinforce the authority of its prior decisions through consistent reference, thereby strengthening its current judgments. The stability of the Court's composition, the possibility of judges serving extended terms, the Court's institutional position as the principal judicial organ of the United Nations, and the requirement that its contentious judgments and advisory opinions be rendered in accordance with international law (as stipulated in Article 38 of the Statute) make this achievement entirely logical. The concept of international jurisprudence and its role in the development of international law derives precisely from this approach and function of the Court.

International arbitration, by contrast, lacks the stability and consistency characteristic of international adjudication. Even in institutional arbitration systems such as ICSID or WTO dispute settlement, where parties have less involvement in arbitrator selection, the diversity of tribunal compositions makes the development of arbitral jurisprudence more protracted and challenging compared to judicial practice. Strict adherence to precedent in international arbitration could compromise arbitration's advantages, including flexibility, confidentiality, and its foundation in party consent. Consequently, the doctrine of precedent as understood in common law systems finds little place in international arbitration. Nevertheless, arbitrators increasingly reference prior awards, both their own and those of other tribunals - a practice that can enhance stability and predictability in arbitration[1] while promoting procedural transparency.[2] Therefore, the role of international arbitral awards, like international judicial decisions, in identifying and interpreting rules of international law, as well as in the formation of customary international law, cannot be denied. The key to resolving this apparent contradiction lies in the concept of "persuasive precedent." In reality, while arbitral tribunals are not *de jure* bound to follow prior decisions, they frequently do so *de facto*.[3]

Among international arbitral institutions, the Iran-United States Claims Tribunal perhaps most closely resembles international judicial bodies. On one hand, pursuant to Article V of the Claims Settlement Declaration, the Tribunal decides cases based on respect for law, applying relevant conflict-of-laws rules and principles of commercial and international law that it deems appropriate, while considering applicable trade usage, contract terms, and the circumstances of each case.[4] On the other hand, the Tribunal's composition - three Iranian arbitrators, three American arbitrators, and three neutral arbitrators operating in three chambers - coupled with its adoption of modified UNCITRAL Rules (1976), creates a framework particularly conducive

1 Tu Liwen, *Why Binding Precedent Does Not Belong in Arbitration* (Working Paper, 7 April 2024) https://ssrn.com/abstract=4887774 accessed 10 May 2024.

2 Emily F Ariz, 'Does the Lack of Binding Precedent in International Arbitration Affect Transparency in Arbitral Proceedings?' (2021) 29(1) *University of Miami International and Comparative Law Review*356.

3 Gabrielle Kaufmann-Kohler, 'Arbitral Precedent: Dream, Necessity or Excuse?' (2007) 23(3) *Arbitration International*, 361, 378.

4 The broad discretion accorded to the Tribunal in selecting applicable conflict-of-laws principles reflects its quintessentially international nature. Such latitude operates dually: it immunizes the arbitral process from being bound by any domestic conflicts regime while simultaneously ensuring its regulation under international legal norms. See in this regard: Homayoun Mafi, 'An Analysis of the Performance of the Iran-United States Claims Tribunal' (2008) 10(24) *Public Law Research Quarterly*, 200.

to the Tribunal's role in the development of international law, a potential the Tribunal has effectively realized over its forty-five years of operation.

The present analysis surveys the most salient dimensions of international state responsibility jurisprudence as developed by the IUSCT.

1. The Necessity of Case-by-Case Determination of State Responsibility

In international law, establishing the elements of state responsibility and the absence of circumstances precluding wrongfulness is fundamentally a judicial function performed by international judges or arbitrators. Experience demonstrates that even in the clearest cases of international legal violations, states invariably deny responsibility, either by contesting the basic facts or by invoking justifications for their conduct. For instance, all states that have unlawfully used force have attempted to justify their actions as self-defense - justifications that have generally failed to gain judicial acceptance.[1]

Moreover, each internationally wrongful act presents unique circumstances that may give rise to separate claims. In their 1980 Algiers Accords, Iran and the United States agreed to establish the Iran-U.S. Claims Tribunal to resolve their disputes, with each claim to be adjudicated separately before one of the Tribunal's three chambers, while also granting certain powers to the Full Tribunal. Consequently, each inter-state or private claim was treated as distinct and independent from other claims before the Tribunal.[2]

During the filing period, 3,952 claims were registered by the governments and nationals of Iran and the United States. A significant portion involved claims by U.S. nationals alleging expulsion from Iran and related damages.[3] On October 9, 1984, the United States government, presuming Iran's international responsibility for expulsion-related claims, requested that the Tribunal issue a general award accepting all such claims and holding Iran liable for compensation, in order to expedite proceedings.[4] The Tribunal rejected this request for a collective judgment on multiple expulsion claims involving approximately 1,500 Americans, ruling that each case required

1 While duly recognizing the primary responsibility of the Security Council in maintaining international peace and security, the **ICJ** has asserted its jurisdiction to adjudicate violations of the prohibition on the use of force—even where such jurisdiction operates concurrently with that of the Security Council. The Court has deemed such disputes justiciable under established legal principles, subject to judicial scrutiny. With respect to **self-defense**—an exceptional right that inherently entails the use of force—the ICJ has consistently held that the occurrence of an **armed attack** must be substantiated by **compelling evidence**. The Court has rejected attempts to justify violations of this principle through broad treaty-based exceptions or under the guise of safeguarding **fundamental security interests**. Notably, the ICJ has emphasized the **stability of borders** and the **preservation of the territorial status quo** in inter-state disputes (e.g., *Burkina Faso v. Mali*, 1986; *El Salvador v. Honduras*, 1992), ensuring that territorial expansionism does not find legal validation and that violations of the prohibition on the use of force are minimized. Simultaneously, the Court has reinforced this prohibition by **refusing to recognize or legitimize** outcomes achieved through unlawful force (e.g., *Namibia*, 1971; *Wall in the Occupied Palestinian Territory*, 2004; *DRC v. Uganda*, 2005). This jurisprudence underscores the ICJ's role in **fortifying the normative framework** against aggressive uses of force under international law. Read more: Seyed Ghasem Zamani, *The Judicial Policy of the International Court of Justice Regarding the Principle of the Prohibition of the Use of Force*, in *Proceedings of the Conference on the Role of the International Court of Justice in the Continuity and Development of International Law* (Iranian Association for United Nations Studies 2010).

2 Before the **ICJ**, a claimant may, at its discretion, frame a single case encompassing multiple factually interconnected incidents. This procedural approach is exemplified by *The Oil Platforms Case (Iran v. US, 2003)*, where the Court adjudicated multiple distinct attacks on Iranian oil installations as a single claim, despite temporal and geographic variations in the incidents. The US counterclaim in the same proceedings, which consolidated factually disparate acts (e.g., naval mine-laying, missile strikes on neutral vessels) into a unified pleading. The consolidation of such claims derives principally from a) the jurisdictional basis of the ICJ's competence; and b) the procedural initiative exercised by either the principal claimant or the counterclaimant.

3 Read more: Ali Ghasemi, 'The International Responsibility of States for the Expulsion of Aliens with Emphasis on the Practice of the Iran-United States Claims Tribunal' (2014) 68 *Judicial Law Perspectives Quarterly* 207-240.

4 Jack Rankin v. The Islamic Republic of Iran, IUSCT Case No. 10913, 1987, para. 11.

individual examination. Issuing a single award of responsibility for multiple claims would have been inconsistent with both the Tribunal's judicial character and the fundamental nature of arbitral and judicial proceedings. This approach underscored the Tribunal's recognition that no judicial or arbitral body should prejudge cases or apply blanket rulings without examining each claim individually. The varying outcomes in expulsion cases decided by different chambers before the U.S.-Iran settlement further confirm the wisdom of this approach.[1]

2. Rejection of Fault as an Independent Element of State Responsibility

The ILC's Draft Articles on State Responsibility identify two elements of an internationally wrongful act: attribution to the state and breach of an international obligation (Article 2). In its commentary, the Commission treated fault as a variable dependent on the nature of the specific international obligation, distinguishing between obligations of conduct and obligations of result. The need to prove fault thus depends on establishing a breach of the international obligation. For obligations of result - where the state guarantees a particular outcome - proof of intentional or negligent conduct is unnecessary. For example, a state's obligation to prevent torture is violated simply by the occurrence of torture attributable to the state.

In *Phillips Petroleum v. Iran*,[2] the Tribunal held that state responsibility for compensating damages to alien property does not require proof that the expropriation was intentional. This approach, maintained in subsequent cases, demonstrates that the Tribunal did not consider fault or intent as independent and indispensable elements of state responsibility.

3. The Expansion of the Concept of "State" in International Responsibility

The attribution of conduct violating international obligations to the Government of the Islamic Republic of Iran was a decisive issue for the United States and American claimants, as many of the alleged acts were committed by Iranian individuals and entities with varying relationships to the Iranian state.

The Tribunal recognized a broader concept of "state" than traditionally established in customary law: encompassing any political division and any entity controlled by the government. The Tribunal distinguished between *de jure* and *de facto* state organs. A de jure organ has formal legal ties to the state, while a de facto organ or agent exercises governmental authority without formal employment or official connection. In cases like *Alfred Short and Yeager*, the Tribunal recognized attribution of private persons' conduct to the state when such persons exercised elements of governmental authority in the absence of official authorities, justifying those acts.

Regarding attribution, the Tribunal in cases like *Starrett Housing*, *Cal-Maine Foods*, and *Unidyne* respectively held Iran responsible for acts of the Ministry of Housing, the National Iranian Industries Organization, and the Iranian Navy.[3]

1 Ibid., 12.

2 Phillips Petroleum Company Iran v. The Islamic Republic of Iran, the National Iranian Oil Company, IUSCT Case No. 39, 1989., para. 98.

3 Starrett Housing Corporation, Starrett Systems, Inc. and others v. The Government of the Islamic Republic of Iran, Bank Markazi Iran and others, IUSCT Case No. 24, 1983., sec.5.; Cal-Maine Foods Inc. v. The Government of the Islamic Republic of Iran and Sherkat Seamourgh Company, Incorporated, IUSCT Case No. 340, 1983, sec.4.; Unidyne Corporation v. The Islamic Republic of Iran, Acting by and Through the Navy of the Islamic Republic of Iran, IUSCT Case No. 368, 1993, para.9.

4. Primacy of Conduct's Nature Over Formal Links in Attribution

The Tribunal consistently required claimants to demonstrate that specific alleged acts were attributable to Iran and that sufficient connection existed between the damage and Iran's government. The Tribunal attributed acts of Iranian ministries, officials and organs to the state both de jure and de facto. Moreover, it recognized attribution for entities controlled by the government even when they weren't formal state structures.

In considering entities like the Foundation for the Oppressed (Bonyad-e Mostazafan), the Tribunal found Iran's arguments about the Foundation being an independent charitable entity irrelevant. Examining the Foundation's charter and actual functions, the Tribunal in *Harnischfeger Corporation*[1] declared it a government organ based on its organization, delegated powers, and objectives. The Foundation's authority to confiscate and seize property meant it exercised governmental authority, making its acts attributable to Iran.

5. Non-Attribution of Private Persons' Conduct to the State

The government, as a legal entity, operates through its legislative, executive and judicial organs. Therefore, the fundamental rule of attribution requires an organic/institutional connection between the conduct and the state. Conversely, private persons' conduct is generally not attributable to the state.[2]

In *International Technical Products v. Iran*, where the claimant alleged that *Bank Tejarat* had expropriated its property, the Tribunal found the Bank had acted as a private commercial entity without evidence of government direction or exercise of governmental authority, thus refusing to attribute its conduct to Iran.[3]

In *Economy Forms Corporation v. Iran*, the Tribunal noted that share ownership could indicate state control over companies for attribution purposes, though not as a standalone factor.[4] Clearly, the degree of control is decisive in such cases.

6. Separation of Powers and Judicial Independence

In *Alfred Haber v. National Iranian Radio & Television*,[5] the Tribunal affirmed that domestic separation of powers doctrine doesn't affect attribution to the state under international law. While many legal systems separate governmental powers for domestic purposes, internationally the state is considered a unitary entity (the principle of state unity). Thus, governmental control may be exercised through judicial, executive or legislative branches, jointly or separately.

In *Oil Field of Texas v. Iran*,[6] the Tribunal held that final judicial decisions could constitute expropriation (referring to an Ahvaz Revolutionary Court judgment), making Iran responsible

1 Harnischfeger Corporation v. Ministry of Roads and Transportation, Industrial Development and Renovation Organization of Iran, Machine Sazi Arak and Machine Sazi Pars, IUSCT Case No. 180.

2 Sylwia Stryjkowska, 'The International Legal Issue of Attribution of Conduct to a State – The Case Law of the International Courts and Tribunals' (2018) *Adam Mickiewicz University Law Review*DOI:10.14746/ppuam.2018.8.10., 143-156.

3 International Technical Products Corporation and Itp Export Corporation, Its Wholly-Owned Subsidiary v. The Government of the Islamic Republic of Iran and Its Agencies, The Islamic Republic Iranian Air Force and the Ministry of National Defense, Acting for the Civil Aviation Organization, IUSCT Case No. 302, 1985, sec 4., part. A.

4 Economy Forms Corporation v. The Government of the Islamic Republic of Iran; the Ministry of Energy; Dam & Water Works Construction Co. ("Sabir"); Sherkat Sakatemani Mani Sahami Kass ("Mana"); and Bank Mellat (formerly Bank of Tehran), IUSCT Case No. 165, 1983, para. 2.

5 Alfred Haber, P.A. v. The Islamic Republic of Iran, IUSCT Case No. 10159, 1989, para.16.

6 Oil Field of Texas, Inc. v. The Government of the Islamic Republic of Iran and National Iranian Oil Company, IUSCT Case No. 43, 1986.

notwithstanding judicial independence. Judicial independence is functional - ensuring proper administration of justice vis-à-vis other government branches - and doesn't affect attribution of judicial conduct to the state.

7. Breach of International Obligations: Expropriation

The Tribunal significantly clarified international standards for indirect expropriation. In the *Starrett Housing* case, it defined the degree of interference constituting expropriation, finding that appointing a "temporary manager" for an Iranian company majority-owned by claimants qualified. The Tribunal stated that governmental measures interfering with property rights that render property virtually useless constitute expropriation, even without formal title transfer, if the owner is effectively deprived of value.[1]

Similarly, in the *Tippetts* case, the Tribunal clarified the degree of property rights interference establishing state responsibility.[2]

8. Effective Nationality

The Tribunal applied the effective nationality doctrine to claims by dual nationals against Iran, making important contributions to clarifying rules on dual nationality. This has implications for diplomatic protection and state responsibility claims. Approximately 120 cases involved claimants who had acquired U.S. citizenship while retaining Iranian nationality.

Iran's arguments about inadmissibility were first rejected in the *Esphahanian* case[3] and the *Golpira* case[4] by Chamber Two. The Full Tribunal then interpreted Article VII(1)(a) of the Claims Settlement Declaration at Iran's request, holding that claims by dual nationals fell within its jurisdiction if their dominant and effective nationality was established.[5]

9. Distinguishing State Succession from Government Succession

In international law, state succession occurs when territorial changes (dissolution, unification, separation, independence) create new international legal entities. Government succession involves replacement of governments through referendum, revolution, coup, etc., where only the government element changes while the state's international personality continues. While state succession may affect international obligations, government succession generally doesn't.

The 1979 Islamic Revolution in Iran constituted government succession, not state succession, thus not affecting Iran's international obligations or attribution of the Pahlavi regime's acts to the Islamic Republic. In the *Phillips Petroleum* case, the Tribunal affirmed that revolutionary governments cannot easily escape legal obligations by policy changes or expropriate foreign businesses without compensation.[6] In the *Alfred Short* case, it held that when revolution establishes a new government, the state remains responsible for the former

1 Starrett Housing Corporation, Starrett Systems, Inc. and others v. The Government of the Islamic Republic of Iran, Bank Markazi Iran and others, IUSCT Case No. 24, 1983, sec. 4-B, para.3.
2 Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran, IUSCT Case No. 7, 1984, para. 17.
3 Nasser Esphahanian v. Bank Tejarat, IUSCT Case No. 157, 1983.
4 Ataollah Golpira v. The Government of the Islamic Republic of Iran, IUSCT Case No. 211, 1983.
5 Islamic Republic of Iran v. United States of America, IUSCT Case No. A-18, 1984.
6 Phillips Petroleum Company Iran v. The Islamic Republic of Iran, the National Iranian Oil Company, IUSCT Case No. 39, para. 86.

government's conduct to the extent it controlled relevant circumstances.[1] Although Iran wasn't held responsible in that case due to insufficient evidence of the Pahlavi regime's control.

Conclusion

Until recently, international law practitioners primarily sought rules of state responsibility in arbitral and judicial decisions. After the ILC's 2001 Draft Articles on State Responsibility, many expected these rules to be codified in a treaty. However, nearly 24 years later, no such treaty exists. Consequently, frequent references to the Draft Articles by international courts and tribunals not only confirm their stability and authority but also clarify their content, thereby strengthening and developing them.[2]

The Iran-U.S. Claims Tribunal is arguably the most significant arbitral institution in international law's history. While its mandate, like other international courts and tribunals, remains dispute resolution rather than law-making, and its decisions' authority is relative, the Tribunal has substantially contributed to international law's development over four decades. As noted, "the Tribunal has demonstrated the dynamic interaction between international law and diplomacy, resolving numerous international disputes while creating important precedents for international legal institutions."[3]

The uncodified, secondary rules of state responsibility have been particularly amenable to development and clarification through the Tribunal's jurisprudence. Since its early 1980s decisions on attribution, ultra vires acts, force majeure, and indirect expropriation standards, the Tribunal has significantly advanced this field. References to its awards by other tribunals, the ILC, and scholars confirm its authoritative status and the high persuasive value of its jurisprudence.

The Tribunal's bilateral nature facilitated arbitrators' ready reference to the ILC Draft Articles to enhance their decisions' persuasive authority. Conversely, the UN Compensation Commission (established by the Security Council to address claims against Iraq for Kuwait's invasion) drew on the Tribunal's experience, while ICSID tribunals frequently cite its awards. Thus, the Tribunal's synergistic relationship with other international institutions in developing state responsibility law is noteworthy.

1 Alfred L.W. Short v. The Islamic Republic of Iran, IUSCT Case No. 11135, 1987., para. 33.

2 Seyed Ghasem Zamani and Zoherh Shafiei, 'The International Responsibility of the United States Arising from the Violation of the Treaty of Amity in Light of the International Court of Justice's Judgment of 30 March 2023' (2024) 73 *International Law Journal*, 208.

3 Mohsen Novintan, *Evaluation of Iran-U.S. Claims Tribunal (IUSCT) Expropriation and Compensation in Individual Claims; A Two-Way Road or a Narrow Dirt Lane?* (LLM Thesis, International & European Trade & Business Law, 2024) DOI:10.13140/RG.2.2.20383.33446., 50.; see also Damien Charlotin, 'A Data Analysis of the Iran-US Claims Tribunal's Jurisprudence: Lessons for International Dispute-Settlement Today' (2019) 1(2) *ITA in Review*, 1-37.

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The Influence of the Iran-United States Claims Tribunal on ICSID and the Permanent Court of Arbitration in the Context of State Responsibility

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ABSTRACT

The Iran-United States Claims Tribunal (IUSCT) stands as one of the most significant international arbitral institutions, having adjudicated a wide array of disputes over several consecutive decades. It has generated a rich body of jurisprudence that warrants comprehensive analysis from various perspectives. One such dimension is its influence on international arbitration practices, which merits in-depth examination. This article aims to explore the impact of the IUSCT on the practices of the International Centre for Settlement of Investment Disputes (ICSID) and the Permanent Court of Arbitration (PCA) concerning state responsibility. To this end, the study employs a descriptive-analytical methodology, drawing on library-based data to achieve its objectives. The findings of the research indicate that the IUSCT has significantly influenced the arbitration practices of ICSID and the PCA in matters pertaining to state responsibility. For instance, the PCA, in cases such as Paushok v. Russia and Allard v. Barbados, which were conducted under international arbitration rules and UNCITRAL rules, has relied on the jurisprudence of the IUSCT to expand the scope of state responsibility in ensuring fair and equitable resolution of disputes with foreign investor companies. Similarly, ICSID, in cases like Santa Elena v. Costa Rica, has drawn on precedents from the IUSCT to develop the concept of state responsibility in matters involving compensation for expropriation of foreign investor companies and the determination of fair compensation amounts.

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Introduction

State responsibility is a cornerstone of contemporary international law, closely linked to issues of peace and security. Clarifying the principles of state responsibility and ensuring their enforcement strengthens the international legal order, particularly in addressing material and, in some cases, moral damages suffered by injured parties. The development of this legal framework is essential for safeguarding the interests of smaller states against more powerful ones. Against this backdrop, the Iran-United States Claims Tribunal (IUSCT) has played a pivotal role in shaping the principles of state responsibility through its extensive jurisprudence.

Established in 1981, the IUSCT has addressed numerous cases involving the attribution of state responsibility for the actions of private and public entities. The United Nations International Law Commission (ILC), in its concerted effort on state responsibility, has also grappled with these issues, balancing the non-attribution of private conduct to the state with the need to hold states accountable for certain actions. The IUSCT's decisions, grounded in international law and customary principles, have contributed significantly to the development of state responsibility as a legal doctrine.

This article seeks to address the following question: How has the Iran-United States Claims Tribunal influenced the practices of ICSID and the Permanent Court of Arbitration in matters of state responsibility? The hypothesis is that the IUSCT has had a profound impact on these institutions by developing and refining the concept of state responsibility. The article first examines the IUSCT's influence on the PCA's approach to state responsibility and then explores its impact on ICSID's jurisprudence.

1. The Influence of the IUSCT in the Context of State Responsibility in the Practice of the PCA

Just as the right of diplomatic protection arises from a state's right to protect its nationals abroad, the international responsibility of a state toward individuals is rooted in its obligation to administer justice and fairness. The connection between the right of diplomatic protection and the principle of the international standard of justice has been firmly established through international mechanisms, including international adjudication. Given that the international standard of justice is embedded

in the generally accepted principles of international law, the PCA has, in its rulings concerning the protection of aliens and their property, upheld this principle (UN Report on International Responsibility, 1956). This section examines the influence of the IUSCT on the PCA's practice in developing state responsibility toward individuals.

1.1. The Influence of the IUSCT on State Responsibility in Cases of Unlawful Expropriation of Foreign Investment

The case of *Saluka Investments v. Czech Republic* before the PCA is one of the most significant cases illustrating the influence of the IUSCT on state responsibility in matters of unlawful expropriation of foreign investments. The dispute arose from events following the reorganization and privatization of the Czech Republic's banking sector. During the communist era, the Czech Republic had a centralized banking system, which ended in 1990. The Czech Republic sold shares in one of its major banks, IPB,[1] to Nomura Group,[2] a private entity. Nomura, having acquired the shares, transferred them to Saluka, a legal entity established under Dutch law.[3]

Pursuant to Article 8 of the Agreement on the Promotion and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Czech and Slovak Republics, dated April 29, 1991, Saluka initiated arbitration proceedings against the Czech Republic on July 18, 2001. Under Article 8(5) of the treaty, the arbitral tribunal was required to apply the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).[4]

It is worth noting that the Czech and Slovak Federal Republic dissolved on December 31, 1992, and the Czech Republic and Slovakia emerged as independent states. The Czech Republic assured the Netherlands that the treaty would remain in force between the Czech Republic and the Netherlands following the dissolution.

Saluka claimed that the Czech Republic had acted inconsistently with its obligations under the bilateral investment treaty between the Netherlands and the Czech Republic. Specifically, Saluka argued that it had been deprived of its investment in violation of Article 5 of the treaty and that it had not been treated fairly and equitably as required under Article 3.[5]

While the parties disagreed on certain facts and their interpretation, the PCA held that the principle that "a State does not incur liability for compensation to a foreign investor for measures taken within its regulatory powers, provided such measures are not discriminatory or arbitrary," forms part of customary international law today. The PCA cited *Emanuel Too v. United States*,[6] in which it was stated that "a State is not liable for the loss of property or economic damage resulting from the good-faith application of tax laws or other measures ordinarily within the state's regulatory powers, provided such measures are not discriminatory or aimed at coercing the alien to surrender property to the state or sell it at a low price."[7]

1 Investiční a Poštovní banka a.s./IP banka a.s., one of the Big Four banks = IPB

2 The **Nomura Group** is a major Japanese conglomerate specializing in **banking services** and **merchant banking**. It typically operates through subsidiaries established in various countries.

3 Mohammad Sadegh Teymouri et al., 'Indirect Expropriation of Foreign Investors' (2018) 6(24) *Private Law Research Journal* 9, 3639-.

4 Suzy H Nikièma, *Best Practices: Indirect Expropriation* (International Institute for Sustainable Development 2012) 89.

5 Markus Krajewski, 'Direct and Indirect Expropriation' in *UNCTAD Annual Capacity Building Program on International Investment Agreements* (UNCTAD 2015) 214.

6 Emanuel Too v. Greater Modesto Insurance Associates and The United States of America, IUSCT Case No. 880

7 Ibid., p. 460.

Thus, it is the role of the arbitrator to determine whether the State's actions cross the line from lawful regulation to expropriation. In addressing the question of "when, how, and at what point regulatory measures amount to unlawful expropriation," international tribunals must consider the circumstances in which the question arises. The context in which the contested measure is applied is crucial in determining its validity.[1]

The PCA also referred to *Emanuel Too v. United States*, stating that "the claimant has failed to prove that local police and fire authorities did not make sufficient efforts to protect his property. According to the claimant's own admission, local police authorities conducted investigations in several instances where he had formally filed complaints. These included cases of property destruction, embezzlement, and the arson of one of his trucks. In each case, the police initiated investigations, and in one instance, legal proceedings were commenced but later halted due to the claimant's refusal to press charges. The claimant did not assert that he had requested special protection from local authorities or that such protection was denied due to his Iranian nationality. Finally, the circumstances surrounding the arson of the restaurant by the local fire department were investigated… The claimant has failed to prove that local authorities did not make sufficient efforts to protect his property or to investigate its destruction. Consequently, the tribunal rejects the claim."[2]

Regarding the issue of unjust enrichment arising from expropriation, the PCA referred to the *Isaiah Case* in the IUSCT and rejected the claimant's argument: "The concept of unjust enrichment is recognized as a general principle of international law found in the laws of most nations (general principles of law). In international law, unjust enrichment is an important element of state responsibility. Therefore, this principle requires that one party's enrichment must be at the expense of another, and both must result from the same act or event. There must be no justification for the enrichment, and no other remedy should be available to the injured party to recover damages from the enriched party."[3]

The theory of unjust enrichment is widely accepted in U.S. law, with its primary emphasis on the concept of "unjustness." Once an increase in one person's assets at the expense of another is established—a determination primarily within the purview of judicial authorities—the resolution of the dispute largely depends on the correct application of the concept of "unjustness" within the framework of legal principles and standards. In Iranian law, the principle of unjust enrichment is not explicitly mentioned, but it is reflected in various provisions of the Iranian Civil Code, such as Article 301.

In summary, the PCA found that the respondent's treatment of Saluka's investment was, in certain respects, unfair and inequitable. The respondent had violated the standard of fair and equitable treatment and had not provided a reasonable justification for its actions. Consequently, the respondent had breached Article 3 of the treaty and was liable to compensate the claimant for the damages incurred.

The UNCITRAL tribunal in *Saluka v. Czech Republic* held that regulatory expropriation

1 Mohsen Abdollahi and Ali Hassan Khani, 'Protection of Individual Rights: Analysis of the ICJ's Judgment in Guinea v. Congo' (2014) 13(45) *Journal of Public Law Research* 31-52.

2 IUSCT, Emanuel Too, Award No. 2-880-460

3 IUSCT, Isaiah, Award No. 2-219-35

encompasses governmental measures that deprive investors of the use and enjoyment of their property, even if such measures do not involve a formal transfer of ownership. Regulatory expropriation is based on governmental regulations concerning health, safety, environmental rights, and cultural policies.[1] It is worth noting that laws and regulations enacted in good faith and for legitimate purposes do not fall within this definition. The Tribunal stated: "The principle that a state's adoption of general regulations within its regulatory powers does not constitute expropriation is widely accepted in customary international law, and there is extensive practice supporting this view."

The IUSCT has considered the duration of domestic regulations in the host State as a significant factor in determining indirect expropriation. In one of its rulings, the IUSCT stated: "...when the events indicate that the owner has been deprived of fundamental property rights and the deprivation is not merely temporary, a finding of expropriation is justified...."[2] The Tribunal held that the temporary seizure of an investor's property by the Iranian government could be considered indirect expropriation, as the deprivation of the investor's property rights, though temporary, was not short-term.

1.2. The Influence of the IUSCT on State Responsibility in the Fair and Equitable Resolution of Disputes with Foreign Investors

The case of *Yukos Universal Limited v. The Russian Federation*[3] is a prime example of the IUSCT's influence on state responsibility in the fair and equitable resolution of disputes with foreign investors. The dispute, heard by the PCA under Article 26 of the Energy Charter Treaty and UNCITRAL rules, arose from the Russian government's actions against Yukos, a major oil company. Yukos was established in 1993 and privatized in 1995-1996. The company, along with its subsidiaries, was involved in the extraction, production, refining, marketing, and distribution of crude oil, natural gas, and petroleum products.

Yukos shareholders alleged that the Russian government initiated criminal proceedings against Yukos' senior management while the company was negotiating a merger with ExxonMobil. The government accused Yukos and its executives of various crimes, including embezzlement, fraud, forgery, and tax evasion. Other actions by the Russian government included reassessing Yukos' tax liabilities, imposing additional taxes, seizing Yukos' assets, canceling its merger with Sibneft, and forcing the sale of Yuganskneftegaz, Yukos' most valuable asset. These actions ultimately led to Yukos' bankruptcy and liquidation, with its assets sold at auction to state-owned companies Rosneft and Gazprom.

In 2005, Yukos' major shareholders, including Hulley Enterprises, Yukos Universal, and Veteran Petroleum, initiated arbitration proceedings against Russia under Article 26 of the Energy Charter Treaty,[4] pursuant to UNCITRAL rules and under the auspices of the PCA.[5] The

1 Matti Pellonpää and David D Caron, *The UNCITRAL Arbitration Rules as Interpreted and Applied*(Finnish Lawyers' Publishing 1994) 435.
2 Ruling No. 141-7-2, dated June 22, 1984, issued in the case of *Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran et al.*
3 Yukos Universal Limited v. The Russian Federation (UNCITRAL, PCA Case No. AA 227), Final Award Rendered on 18 July 2014.
4 **Article 26: Settlement of Disputes Between an Investor and a Contracting Party**
5 Craig Bamberger, Jan Linehan, and Thomas Waelde, *The Energy Charter Treaty in 2000: In a New Phase* (Oxford University Press 2000) 130-.

shareholders claimed that Russia had not treated their investment fairly and equitably and had expropriated their assets, in violation of Articles 10(1)[1] and 13(1)[2] of the Energy Charter Treaty.

In response, Russia raised significant objections regarding the Tribunal's jurisdiction and the admissibility of the claims.[3] Russia argued that none of the entities in question were under its control or supervision, citing the IUSCT's decision in *Flexi-Van Leasing, Inc. v. Iran*, which referenced Article 8 of the ILC's Draft Articles on Responsibility of States for Internationally Wrongful Acts (the ARSIWA).[4,5]

Russia further argued that the importance of a causal link between the challenged measures and the investors' investment had been affirmed by international tribunals, including the IUSCT in *Otis Elevator Co. v. Iran*.[6] The claimants, in turn, cited several legal sources, including the IUSCT's decision in *Amoco International Finance Corp. v. Iran*,[7] concluding that in cases of unlawful expropriation, investors are entitled to choose between the valuation date of the breach and the date of the award.[8]

The PCA also referred to the IUSCT's decision in *Sylvania Technical Systems, Inc. v. Iran*[9] regarding the calculation of interest on investments, stating: "In the absence of a specified interest rate in the contract, the arbitral tribunal calculates the interest rate based on the amount that the claimant could have earned through a conventional investment in its home country had it received the award in a timely manner." The Tribunal noted that this approach had been followed in other IUSCT decisions.

The PCA, influenced by the IUSCT, concluded that the claimant was entitled to the full present value of compensation that should have been paid at the time of expropriation. The expropriating State could not enrich itself by delaying compensation. The Tribunal examined

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1 **Article 10: Promotion, Protection, and Treatment of Investments:**

1. Each Contracting Party shall, in accordance with the provisions of this Treaty, encourage and create stable, equitable, favorable, and transparent conditions for investors of other Contracting Parties to make investments in its territory. Such conditions shall include a commitment to accord at all times fair and equitable treatment to investments of investors of other Contracting Parties. Furthermore, such investments shall enjoy full protection and security, and no Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, or disposal of such investments. In no case shall such investments be accorded treatment less favorable than that required by international law, including treaty obligations. Each Contracting Party shall observe any obligation it has entered into with regard to an investor or an investment of an investor of any other Contracting Party.

2 **Article 13: Expropriation:**

1. Investments of investors of a Contracting Party in the territory of any other Contracting Party shall not be nationalized, expropriated, or subjected to a measure or measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") except where such expropriation is: a. For a purpose which is in the public interest; b. Not discriminatory; c. Carried out under due process of law; and d. Accompanied by the payment of prompt, adequate, and effective compensation.

Such compensation shall amount to the fair market value of the expropriated investment immediately before the expropriation took place or before the impending expropriation became publicly known, whichever is earlier. At the request of the investor, the fair market value shall be determined in a freely convertible currency on the basis of the market exchange rate prevailing for that currency at the date of valuation. Compensation shall also include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

3 Mohammad Ali Bahmei and Mohsen Borhani, 'The Jurisdiction of the Arbitration Tribunal in the Yukos v. Russia Case' (2018) 15(2) *Journal of Private Law* 323-347.

4 **Article 8: Conduct Directed or Controlled by a State**; The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons was in fact acting on the instructions of, or under the direction or control of, that State.

5 Marcin Katdunski, 'Some Reflections on Arbitration in the Yukos v. Russia Case' (2014) Institute of Comparative Law Publications, 141-167.

6 Otis Elevator Company v. The Islamic Republic of Iran and Bank Mellat (formerly Foreign Trade Bank of Iran), IUSCT Case No. 284, Award No. 2-284-304.

7 Amoco International Finance Corporation v. The Government of the Islamic Republic of Iran, National Iranian Oil Company, National Petrochemical Company and Kharg Chemical Company Limited, IUSCT Case No. 56, Partial Award No. 3-56-310.

8 Aloysius Llamzon, 'Yukos v. Russia: The State of the Unclean Hands Doctrine in International Investment Law' (2015) 30(2) *Foreign Investment Law Journal* 315325-.

9 Sylvania Technical Systems, Inc. v. The Government of the Islamic Republic of Iran, IUSCT Case No. 64, Award No. 1-64-180.

two issues: (a) the date of expropriation of the claimant's investment by the respondent, and (b) whether the claimant had the right to choose the valuation basis between the date of expropriation and the date of the award. Ultimately, the PCA ruled that Russia had breached Article 13 of the Energy Charter Treaty and was liable to compensate the claimants for the damages resulting from the unlawful expropriation of Yukos' assets.

Furthermore, the case of *Allard v. Government of Barbados*[1] was adjudicated by the PCA under the UNCITRAL Arbitration Rules. The dispute concerned Peter Allard's investment in the acquisition and development of an eco-tourism site in Barbados. The claimant, Mr. Allard, alleged that Barbados failed to take reasonable and necessary measures to protect the environment and, through its organs and agents, directly contributed to the pollution of the eco-tourism site in question, thereby diminishing the value of the investment.[2]

According to the claim, Barbados' actions and omissions constituted a breach of its international obligations toward Canadian investors under the 1996 Agreement between the Government of Canada and the Government of Barbados for the Promotion and Reciprocal Protection of Investments.[3]

The claimant, referencing the *Emanuel Too v. United States* case before the IUSCT, argued that in determining whether a State has acted appropriately in protecting and securing investments, it is essential to consider whether the host State took adequate measures to apprehend offenders or enforce penalties against wrongdoers. The PCA, also citing the *Emanuel Too* case from the IUSCT, held that protecting claimants against unlawful expropriation does not impede a State's freedom to enact general laws or take non-discriminatory measures within the scope of its regulatory authority.

2. The Development of State Responsibility in ICSID Practice

The International Centre for Settlement of Investment Disputes (ICSID) is a leading arbitral institution for resolving disputes between states and foreign investors. As such, ICSID's arbitral practice is of great significance in both procedural and substantive matters. This section examines the development of state responsibility in ICSID practice.

2.1. The Influence of the IUSCT on State Responsibility in Compensating Foreign Investors

Article 42(1) of the ICSID Convention provides: "The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable." Thus, in cases involving state responsibility for internationally wrongful acts, ICSID tribunals have jurisdiction to award compensation or other remedies in disputes arising from investments between member states and their nationals. Some of these claims directly invoke international law as their basis.[4]

1 Peter A. Allard v. The Government of Barbados, PCA Case No. 2012-06

2 Alberto Alvarez-Jimenez, 'The International Law Gaze: Allard v. Barbados' (2018) 1(1) *New Zealand Law Journal* 321324-.

3 Gunnar Lagergren, 'Iran-United States Claims Tribunal' (1995) 13(2) *Dalhousie Law Journal* 519.

4 Alireza Ebrahim Gol, *Translation of the United Nations International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2nd edn, Shahre Danesh Publication 2011) 209.

On June 2, 1995, ICSID received a request for arbitration from Santa Elena, a Costa Rican company, dated May 15, 1995. Most of the company's shareholders were U.S. nationals. The claimant sought to initiate arbitration proceedings against Costa Rica under the ICSID Convention, to which both the United States and Costa Rica were parties. The claimant alleged that the dispute arose from the expropriation of Santa Elena's property and sought compensation for the damages incurred.

The ICSID tribunal stated that, in the absence of a request by the parties to modify the ICSID arbitration rules, it would follow the procedures outlined in Article 44 of the ICSID Convention.[1] The arbitration was conducted in accordance with Section 3 of Chapter IV[2] of the ICSID Convention and the ICSID Arbitration Rules.

On May 5, 1978, Costa Rica issued an expropriation decree for Santa Elena. Over the nearly twenty-year period from the expropriation in 1978 to the initiation of arbitration in 1995, the parties had faced delays and intermittent litigation in Costa Rican courts. Each party blamed the other for the prolonged delay in resolving the compensation issue. The ICSID tribunal found that the assignment of blame or fault to either party did not affect the outcome of the case and did not require the Tribunal's consideration. The key issue for the Tribunal was that no compensation had been paid by Costa Rica for the expropriation from 1978 to 1995. Thus, the only issue for the Tribunal to determine was the amount of compensation owed to the claimant for the expropriation.[3]

The ICSID tribunal's reliance on the IUSCT is evident in its acceptance of the principle that a State must compensate a foreign investor for expropriated property. The Tribunal held that the obligation to pay compensation lies with the expropriating State, whether under Costa Rican law or international law. Even in cases of lawful expropriation, the terminology used to describe the "amount of compensation payable" varies, including terms such as "full," "adequate," "appropriate," "fair," and "reasonable," sometimes accompanied by additional descriptors such as "market value."

In this case, the ICSID tribunal avoided delving into doctrinal debates on the standard of compensation and held that compensation should be based on the fair market value of the asset, calculated with reference to its highest and best use. The Tribunal cited the IUSCT's decision in *Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran*,[4] which held: "The deprivation or taking of property under international law can occur through State interference with the use or enjoyment of property, even if such interference does not affect legal title. While the State's assumption of control over property does not automatically justify the conclusion that the State has expropriated the property and is thus liable to pay compensation under international law, such a conclusion is justified when the events indicate that the owner has been deprived of fundamental property rights and the deprivation is not merely temporary.

1 **Article 44**: All arbitration proceedings shall be conducted in accordance with the provisions of this Section, unless the parties agree otherwise, in which case the arbitration shall be governed by the agreed procedural rules. In the event of any procedural question arising that is not addressed by this Section, the arbitration procedure, or any rules agreed upon by the parties, the arbitral tribunal shall have the authority to determine such matter.

2 Powers and Functions of the Tribunal

3 Charles N Brower and Jarrod Wong, *General Valuation Principles: The Case of Santa Elena* (Oxford University Press 2005) 22.

4 Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran, IUSCT Case No. 7, 141.

The State's intent is less important than the effects of its actions on the owner, and the form of control or interference is less significant than the reality of its impact."

The IUSCT's decision in *the Tippetts case* indicates that state responsibility under investment treaties is not limited to the expropriation of investor property. The possibility of invoking state responsibility by investors under bilateral and multilateral investment treaties gives this responsibility a distinct character, somewhat separate from the general regime of state responsibility. The ICSID tribunal, citing the IUSCT's decision in *Tippetts case*, noted that a wide body of authority supports the view that property is considered expropriated when the owner is deprived of title or access to the economic benefits and use of the property.

2.2. The Influence of the IUSCT on State Responsibility in Determining Fair Compensation for Foreign Investors

Another example of the IUSCT's influence on state responsibility is its impact on the determination of fair compensation for foreign investors. In determining the fair market value of Santa Elena's property as of the expropriation date (May 5, 1978), the ICSID tribunal used an approximate valuation based on the parties' assessments in 1978 and referenced several IUSCT decisions. The Tribunal cited the IUSCT's decision in *AIG Capital Partners, Inc. v. Kazakhstan*,[1] which stated: "From the above, it is possible to arrive at results that reasonably establish the minimum and maximum value of the company. However, the range between these two limits is extraordinarily wide, and to determine the company's value within this range, the Tribunal must resort to an approximate valuation, taking into account all relevant circumstances of the case."[2]

In line with the IUSCT's decision, the ICSID tribunal held that the valuation of investor assets in expropriation cases must be fair and consider the specific circumstances. The Tribunal noted that in *Phillips Petroleum Co. v. Iran*,[3] the IUSCT had recognized the need to determine "the price that a willing buyer would have paid for the asset at the time of expropriation," based on all relevant circumstances, including equitable considerations.

The ICSID tribunal further stated: "The IUSCT in *Starrett Housing Corp. v. Iran*[4] recognized that determining the fair market value of any asset inevitably requires considering all relevant factors and exercising judgment and discretion…. In *the Starrett case*, the Tribunal based its decision on an expert report using the discounted cash flow (DCF) method, though it made various adjustments to the conclusions and figures obtained. The need for such adjustments is understandable, as the Tribunal's valuation must account for all relevant circumstances, including equitable considerations."

Santa Elena claimed that it was entitled to compound interest on the value of the property as of 1978, calculated from the expropriation date. The respondent argued that no interest had accrued from the expropriation and that the claimant was only entitled to simple interest at a nominal rate.

However, the ICSID tribunal, citing the IUSCT's decision in *Flexi-Van Leasing, Inc. v.*

1 AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan, ICSID Case No. ARB/01/6, 93.
2 Ibid., 109.
3 Phillips Petroleum Company Iran v. The Islamic Republic of Iran, the National Iranian Oil Company, IUSCT Case No. 39, 39-425.
4 Starrett Housing Corporation, Starrett Systems, Inc. and others v. The Government of the Islamic Republic of Iran, Bank Markazi Iran and others, IUSCT Case No. 24, 314.

Iran,[1] rejected the respondent's argument and held that in cases like the present one, compound interest (where warranted by the circumstances) is not excluded.

The ICSID tribunal referred to the IUSCT's decision in *Sylvania Technical Systems, Inc. v. Iran*,[2] in which "the tribunal never awarded compound interest," and specifically stated:

"In the view of this chamber, justice and equity require that a consistent method be adopted and applied in awarding interest in cases before this chamber. The rates specified in contracts, unless there are special circumstances, should be accepted by the Tribunal. In the absence of a specified interest rate in the contract, the arbitral tribunal calculates the interest rate based on the amount that the claimant could have earned through a conventional investment in its home country had it received the award in a timely manner. Six-month deposits in the United States are a type of investment whose average interest rate can be obtained from an official and reliable source. The Tribunal notes that there are precedents in arbitral tribunals where, in separate and unique cases, the interest awarded was calculated based on the borrowing rate from banks in the claimant's country, and sometimes the prime rate was used.[3] However, given the circumstances of this Tribunal, where a large number of parties are involved in a vast number of cases, it is appropriate to adopt a uniform approach, and therefore it is more appropriate to determine the interest rate based on the yield on investment over the relevant period. To achieve this uniformity, the interest on awards can be determined based on deposit (bank) rates, which are essentially similar and available to all investors. Compared to deposit rates, borrowing rates vary depending on the creditworthiness and reputation of borrowers, not all of whom are able to borrow at the prime rate, and the creditworthiness and reputation of some may change over the relevant period. Moreover, not all those who suffer from delayed payment actually borrow. For these reasons, determining a general interest rate based on the prime rate for all awards is, in most cases, realistic…. The practice that the Tribunal has followed so far in awarding interest has not been entirely uniform. Although the chambers generally act uniformly in awarding interest based on compensation for delay, and although the Tribunal has never awarded compound interest, the rates applied by the Tribunal have rarely been uniform. The Tribunal accepts the rates specified in contracts, and therefore agreed upon by the parties: 'though it has been said that unreasonable or usurious rates will not be applied….' However, in the absence of a specified interest rate in the contract, the Tribunal has, at its discretion, applied rates between 8.5% and 12%, which it deemed fair."

Based on these arguments, the ICSID tribunal ruled that Costa Rica was liable to pay compensation to Santa Elena.

Conclusion

Attribution is one of the elements of state responsibility for breaches of international obligations under international law, which sets out various conditions and criteria for attributing wrongful acts

1 Flexi-Van Leasing, Inc. v. The Government of the Islamic Republic of Iran, IUSCT Case No. 36, 259. ("Most awards allocate only simple interest, but occasionally compound interest has been awarded").

2 Sylvania Technical Systems, Inc. v. The Government of the Islamic Republic of Iran, IUSCT Case No. 64, 180.

3 In the United States, the **prime rate** refers to the preferential interest rate that financial institutions employ as a reference point for establishing loan terms for their most creditworthy commercial borrowers.

to a State. For state responsibility to arise, three conditions must be met: (1) an act or omission inconsistent with an international obligation; (2) sufficient evidence to attribute the breach to a specific state; and (3) harm resulting from the wrongful act or omission.

The Iran-United States Claims Tribunal, as an international arbitral institution with over four decades of experience in various areas of international responsibility, has demonstrated that the attribution of acts by legal and natural persons is governed by the United Nations International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts (the ARSIWA) and other general and specific rules of international law, which the Tribunal has taken into account.

The IUSCT, as one of the most influential institutions in the development and interpretation of international law, particularly in the context of treaties and contracts, has contributed to the gradual evolution of international law. The Tribunal has established a coherent approach to interpretation, consistent with international arbitral practice. By relying on the Algiers Accords, which recognized it as the authority for resolving disputes and interpreting the Accords, the Tribunal has drawn on implicit obligations derived from treaties and contracts to supplement textual interpretation.

The tribunal's approach to interpreting the Algiers Accords has been based on the principles set out in Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties, as well as "general principles of law" and "international customary law." The effort to create a framework for arbitration by international judicial bodies is one of the greatest legal achievements of the century. A key aspect of UNCITRAL's role in this process has been to provide rules that harmonize arbitral procedures worldwide.

The IUSCT has played a significant role in establishing UNCITRAL's rules, which, despite being less than four decades old, have emerged as highly influential global arbitration rules. The Tribunal's practice in applying UNCITRAL rules has been extensive and remains among the most important in this field.

Given the absence of a hierarchy among international arbitral tribunals, the IUSCT, like other such tribunals, has not been bound by the principle of precedent. However, the Tribunal's progressive interpretations in resolving disputes, coupled with the subsequent reliance on its decisions in later arbitral awards and judicial rulings, as well as their reflection in international conventions and treaties, demonstrate the widespread acceptance and recognition of the IUSCT's decisions among international actors. This reflects a movement toward the gradual development of international law.

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Evidence and Burden of Proof in the Jurisprudence of the Iran-United States Claims Tribunal and Its Impact on Case B-1

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ABSTRACT

In the case of "Iran's Foreign Military Sales" (Case B-1), which encompasses six claims and a counterclaim, proceedings have continued for over four decades. A focal point in the process of filing numerous applications and the rulings issued in this case has consistently been the issue of evidence and the burden of proof. This qualitative research aims to address the fundamental question of the approaches taken by the Iran-United States Claims Tribunal regarding evidence and the burden of proof, as well as the implications of these approaches on the adjudication of Case B-1. The findings indicate that the Tribunal, in each case, has adhered not only to general legal principles - such as 'actori incumbit onus probandi' -but also to the unique circumstances and specific conditions of each case, such as the accessibility of evidence, in determining the allocation of the burden of proof. As the parties strive to substantiate the credibility of their evidence before the Tribunal using general principles of international law, which are potentially recognized as applicable law by the Tribunal, they also seek to undermine the credibility of the opposing party's evidence through various arguments. It is essential for Iran to enhance its precision in referencing the submitted documents and to clarify the technical dimensions, as well as to ensure compliance with the Tribunal's standards in future rulings, in order to achieve its objectives in other ongoing cases.

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Introduction

In the wake of significant economic disputes between Iran and the United States prior to the fall of the Pahlavi regime, both governments established a legal framework, referred to as the Iran-United States Claims Tribunal (I.U.S.C.T., the Tribunal), in The Hague under the Algiers Accords[1] to resolve a substantial portion of their existing legal disputes.[2] Evidenced by the number of cases it has adjudicated and the noteworthy precedents established in its rulings, over four decades since its establishment, the Tribunal has emerged as one of the most significant arbitration bodies in history,. It is noteworthy that by the time the opportunity for filing briefs in the Tribunal concluded, a total of 6,250 cases had been registered. However, following the Tribunal's decision to decline jurisdiction over claims brought by the Iranian government against U.S. nationals and the subsequent dismissal of 2,300 cases, 3,952 cases remained for adjudication, the majority of which have produced rulings, with only a few currently under progress.[3]

One of the influential factors in the arbitral process of various claims is the issue of evidence and the burden of proof, which has been given attention akin to any other legal dispute within the Tribunal. It may be said that the question of the burden of proof in relation to claims 2 and 3 is among the most impactful issues affecting the final outcome of the cases. This matter has been extensively discussed in all briefs submitted by the parties and has consumed significant time during hearings addressing broader issues of the cases. Considering the arguments presented by the parties and the Tribunal's precedents in other cases that have been adjudicated or resolved in various ways, it appears that the Tribunal, in each case, adheres to general legal principles concerning evidence and the burden of proof, including the principle that the burden of proof lies with the claimant, while also taking into account the special circumstances of each case such as access to evidence when determining shifts in the burden of proof.

Accordingly, this research, relying on a descriptive-analytical methodology and utilizing library resources, seeks to answer the fundamental question: What is the role of evidence and

1 These statements include two public statements and a dispute resolution statement dated January 19, 1981 (29 Dey 1359 in the Persian calendar), along with several other attached documents, which brought an end to the 444-day hostage crisis of the staff of the U.S. Embassy in Tehran.

2 Gibson, Christopher S. and Drahozal, Christopher R., 'Iran-United States Claims Tribunal Precedent in Investor-State Arbitration' (2006) 23 Journal of International Arbitration 521, 521.

3 Arab Chadegani, Reza, 'Governing Law and Its Impact on the Foreign Military Sales (FMS) Case in the Iran-United States Claims Tribunal' (2019) 50(4) Quarterly Journal of Public Law Studies 1643, 1644.

the burden of proof in the jurisprudence of the Iran-United States Claims Tribunal, and how does it affects on the adjudication of case B-1? The insufficient attention to the details and nature of cases presented in this Tribunal within domestic legal literature and the Tribunal's procedural rules, which compel it to issue substantiated rulings, makes addressing the issue of evidence and the burden of proof in these cases imperative. Furthermore, emphasizing this topic can elucidate various aspects of evidence and proof, potentially facilitating the provision of substantiated arguments in the ongoing adjudication of other open cases before the Tribunal. This article will first briefly examine case B-1 before the Tribunal, the status of cases 2 and 3, and the general issues concerning evidence and the burden of proof, before specifically addressing the matters raised in the Tribunal's disputes. Finally, it will explore the challenges faced by the parties in the ongoing proceedings of this case.

1. Case B-1 Before the Iran-United States Claims Tribunal

Following the establishment of the Tribunal as part of the mechanisms for resolving disputes outlined in the Algiers Accords, the process of registering claims within the Tribunal's jurisdiction commenced.[1] Article 2 of the Accords limits claims to those raised by nationals of the United States against Iran, claims by Iranian nationals against the United States, and any counterclaims arising from contracts, transactions, or events upon which a claim is based,[2] as well as formal claims by both governments against each other.

In this context, the Government of Iran submitted its main application regarding the Letter of Agreements (LOA) for Foreign Military Sales (FMS), which included a statement of the nature of the dispute, the basis for the Tribunal's jurisdiction, and a request for compensation on November 18, 1981,[3] along with a supplemental brief and initial response to the counterclaim of the United States on January 28, 1982.[4] This case represents the largest contentious issue between the two governments in terms of volume and value brought before the Tribunal.

From the perspective of the Iranian government, the dispute and the subject of this application stem from agreements made between the two governments in the early 1960s for the provision of military equipment, spare parts, and services by the United States government, culminating in 2,679 "Letter of Offer and Acceptance (LOA)." Additionally, this application includes a claim for five million dollars paid by the Iranian government to the United States in November 1979 for the purchase of spare parts for military and transport aircraft, which the United States failed to deliver as per its obligations.[5]

This case has been raised in six parts with the following claims for compensation:

- **Claim 1:** The sum of 5 million U.S. dollars paid to the U.S.G. in November 1979

1 The Secretariat of the Tribunal has a specific method for registering documents and submissions from the parties in each case. According to the Tribunal's procedure, each document in a case is assigned a unique number (Document No.) that is tracked from the beginning to the end of the proceedings. To prevent errors, the name of each case is noted alongside its corresponding document number. The following will outline all the documents registered in Case B-1 according to the aforementioned Tribunal method.

2 I.U.S.C.T., Case B1, Doc. 1949, Counterclaim, Interlocutory Award No. ITL 83-B1-FT, 9 September 2004, pp. 116-134.

3 I.U.S.C.T., Case B1, Doc. 1, Statement of Claim of Ministry of National Defense.

4 I.U.S.C.T., Case B1, Doc. 127, Supplement No. 2 to Statement of Claim of Ministry of National Defense.

5 I.U.S.C.T., Case B1, Doc. 1:1-2.

(after the victory of the Islamic Revolution in Iran) for the provision of military spare parts and the failure of the U.S.G. to honor its commitment. , totaling $7.2 million.

- **Claim 2:** Excess amount of Iranian money unduly held by the U.S.G. (approximately $1.8 billion).
- **Claim 3:** The non-delivered military items and equipment due for delivery. (approximately $1.4 billion).
- **Claim 4:** The unjustified retention of Iranian military equipment sent to U.S. for conducting particular services. ($200 million).
- **Claim 5:** The U.S.G. failure to amend the design defects C'xisting in some of the sold. items, ($340 million).
- **Claim 6:** The losses and damages incurred because of the U.S.G. wrongful commissions and ommissions. ($5 billion).

The total amount claimed, including interest requested in Iran's application, amounts to $10,893,500,000 (ten billion, eight hundred ninety-three million, five hundred thousand dollars).[1]

In the proceedings related to Case B-1, the Tribunal has issued its awards on three claims to date. The award on Claim 1, confirming the payment of $7,800,000 as principal and interest due to Iran, was issued on December 6, 1989.[2] The award on Claim 4, confirming the receipt of $578,000,000 by Iran as principal for the value of items transferred to the United States along with applicable interest, was issued on December 2, 1991, as a settlement Agreement.[3] The award on Claim 5 rejected Iran's application on June 16, 1988.[4]

Proceedings on Claims 2, 3, and 6 are ongoing, with Claims 2 and 3 being centrally processed due to their related subject matter. The stages for the exchange of briefs and preliminary hearings regarding selected contract have concluded, and the proceedings continue. As for Claim 6, no independent application has yet been registered by Iran with the Tribunal, and the parties continue to seek extensions regarding this claim.[5]

It is essential to note that on February 3, 1979, during the final days of the Pahlavi regime under Ministeration of Bakhtiar, a memorandum of understanding (MOU) was signed between senior military representatives of the Iranian government and a representative of the United States Department of Defense. This agreement concerned the reduction and cancellation of certain military orders from Iran, particularly highly sensitive items, in exchange for the full and equitable reimbursement of payments made, along with the remaining balance of Iran's

1 I.U.S.C.T., Case B1, Doc. 1:15-19.
2 I.U.S.C.T., Case B1, Doc. 817 (Claim No. 1), Joint Request for Arbitral Award on Agreed Terms, p. 1.
3 I.U.S.C.T., Case B1, Doc. 860 (Claim 4), Full Tribunal; Partial Award on Agreed Terms, No. 525-B1-FT (2 December 1991), p. 1.
4 I.U.S.C.T., Case B1, Doc. 593 (Claim No. 5), Full Tribunal; Award No. 370-B1-FT (16 June 1988), p. 20.
5 Arab Chedegani, Op. Cit. (2019) 1646.

trust fund,[1] valued at approximately one billion dollars. This would be facilitated through a process of sale and transfer to the United States government or third-party states.[2]

The complex financial process for the resale and transfer of Iranian-owned items was initiated immediately by the United States government; however, the status of other cases was suspended due to the revolutionary conditions in Iran. With the takeover of the U.S. Embassy, virtually all other activities were halted.[3] Following the conclusion of the Algiers Accords and the receipt of invoices issued by the United States, it became evident that a substantial portion of the funds paid by Iran had been disbursed as cancellation fees to domestic contractors in the United States, rendering them non-recoverable. These amounts were also included as part of Iran's claims in cases 2 and 3.

2. Proceedings Regarding Claims 2 and 3

In light of the United States' assertion in its initial pleading that the subjects of claims 2 and 3 are identical, the Tribunal ordered the consolidation of the two claims and directed that they be addressed countemperaneously and continuously. Generally, claims 2 and 3 pertain to disputes arising from the 2,679 FMS LOAs between Iran and the United States that were concluded from the inception of the program until the occurrence of the Islamic Revolution. However, since only 1,126 of these agreements were in effect at the time of the Revolution, the Tribunal has focused its proceedings on these specific agreements.[4]

Given the extensive topics raised in claims 2 and 3, the Tribunal established methods to facilitate the final arbitration of all issues presented in these claims and required both parties to submit explanatory pleadings regarding the contested costs. The Tribunal mandated that the parties file separate pleadings and relevant evidence for the adjudication of 130 selected cases[5] from Iran.[6]

Thus far, the Iranian government has articulated its positions and presented its supporting evidence for the 130 selected FMS agreement cases in two instances: in 1990 and 2002. The United States government has done so in 1993 and 2012. Both states have also submitted detailed pleadings regarding cancellation costs[7] and other issues[8] before the Tribunal.[9] Hearings for 25

1 In the United States Foreign Military Sales program, according to its domestic law, each government is required to open an account at the Federal Reserve and the U.S. Treasury, known as the government's escrow account. All expenses for that government's military purchases are deposited independently into this account and then used accordingly. This account also serves as the holding place for advance payments of each sales agreement, as well as other funds received from the buyer as a guarantee to cover potential cancellation costs. Notably, the remaining balance of Iran's escrow account, amounting to approximately $400 billion, along with interest of about $1.3 billion, was returned to Iran following the Joint Comprehensive Plan of Action (JCPOA).

2 United Nations Secretariat, Document No. 18582 (1980).

3 I.U.S.C.T., Case B1, Doc. 1556 (Claim No. 2 & 3), Part I: Brief, Volume II of II, Rebuttal of the United States Concerning Responsibility for Termination Costs.

4 I.U.S.C.T., Case B1, Doc. 199 (Claim No. 4), Full Tribunal, Order.

5 These 130 selected cases each pertain to an independent sales agreement that has become notable in the proceedings of individual cases.

6 I.U.S.C.T., Case B1, Doc. 664 (Claim No. 2 & 3), Full Tribunal, Order, pp. 1-2.

7 The costs of cancellation are part of the claims presented in Claims 2 and 3, arising from various payments made from Iran's escrow account regarding the canceled sales agreements.

8 In categorizing the claims in Claims 2 and 3, the Tribunal identified several issues, such as the remaining balance of the escrow account, the impact of directives from the President of the United States on the fulfillment of obligations, and the principles of the memoranda of understanding, and has established independent proceedings for these matters.

9 Arab Chedegani, Op. Cit. (2019) 1646.

selected cases from the 130 individual cases were held in 2018, and since then, the Tribunal has been issuing rulings on the matters raised by the parties.

3. Evidence in Claims 2 and 3

It appears that the Tribunal has thus far established a comprehensive set of legal principles concerning the burden of proof, evidentiary grounds, and the standards of proof. Given that the Tribunal's procedural rules are based on the UNCITRAL rules and have not been altered by the parties, it has reasoned that its rules generally reflect principles accepted in international arbitration.[1] Therefore, in ensuring the sufficiency of evidence in disputes, akin to any other Tribunal, the Tribunal not only considers its own prior decisions but also pays attention to the procedures of other international arbitration Tribunals, treaties, and the opinions of international law scholars to prevent extralegal or ultra vires behaviors and claims.[2]

In this case, considering that Iran's claims are determined independently in each case based on its accounting center's report, the categorization based on the military organizations involved may prove beneficial for referencing each case and classifying the evidence presented by both parties. Consequently, Iran categorized its pleadings and claims into four main categories: army, Air Forces, Navy and Iranian Helicopters Support and Reconstruction Company (IHSRC) claims, thereby enabling a clearer presentation and elaboration of its consistent evidence within each category. Below, the evidence cited by Iran will be displayed in a consolidated table:

Row	Document Title	Description of Contents
1	History List of Case (HLC)	Includes reports HI133 and HI14 from the Iranian Air Force support and supply systems.
2	Case Statistical Report (CSR)	Includes readiness reports from one of the subdivisions of the Air Force supply system.
3	Procurement History	A computerized collection of readiness information, order status, and receipt of items related to the IHSRC.
4	SRC	Cards that record the history of an item from the moment of order to its entry and storage in the Navy warehouse.
5	AF Cards	Cards that track the history of ordered items until receipt in the warehouse.
6	Navy Packing List	
7	Memorandums	
8	Due-In Cards	Inventory control cards used in the Ground Forces, documenting status from order to warehouse entry and inventory.

The documents submitted by the United States, unlike those presented by Iran, have a uniform structure and formatting concerning all the forces involved in the FMS cases. The United States utilized a set of systems based on the support structure for the FMS program, which relied on the support systems of each of the three military branches prior to 1975. In 1976, the expansion of the FMS program led the United States to establish a central body for overseeing FMS operations, known as the Security Assistance Accounting Center (SAAC).

1 I I.U.S.C.T. Report, Vol. 11, (DEC. 45-A20-FT) (10 July 1986), p. 274, para. 10.
2 I.U.S.C.T. Report, Vol. 4, CMI International v Ministry of Roads and Transport of the Islamic Republic of Iran, AWD 99-245-2 (27 December 1983), pp. 267-268.

This center assumed all financial responsibilities related to FMS, and since then, all documents pertaining to FMS programs have been centralized and produced at this center. The table below illustrates the variety of documents recorded by the United States in Claims 2 and 3.

Row	Document Title	Description of Contents
1	H051	Final tracking of the status of an item for support and readiness operations in the U.S. Air Force from the 1960s to the 1980s.
2	CISIL[1]	Final tracking of the status of an item for auditing and accounting in the U.S. Ground Forces from 1976 to 1998.
3	MISIL[2]	Final tracking of the status of an item for auditing and accounting in the U.S. Navy since 1978.
4	MILSTRIP Punch Cards	Punched cards based on a special military coding system for transmission in a specific network, with 80 columns for essential item information in a limited space with a standardized sequence.[3]
5	ILC[4]	Along with quarterly statements, this serves as a detailed status report of items and services sent to the recipient.
6	DD1348-1	A sample government warehouse release form from the U.S. prepared in six copies and sent with the shipment to the buyer.
7	DD-250	A sample contractor warehouse release form sent with the shipment and bill of lading to the buyer, also considered an invoice.
8	H028	Standard service cost forms used for auditing and accounting in the U.S. Air Force.
9	H075	Standard item cost forms used for auditing and accounting in the U.S. Air Force.
10	DD645	A report issued quarterly by the Security Assistance Accounting Center (SAAC) based on the latest available costs and remaining balances of previous invoices for each case.
11	Delivery Listing	A report that includes all information related to items delivered in each periodic invoice and forecasts future requirements for each specific case.
12	SF1080	Standard billing form for payments in U.S. government agencies for services rendered.
13	SF1034	Standard billing form for payments to private contractors for services rendered.
14	NC 140	Standard request form for special work and services for the U.S. Navy with a special number for entry into the billing issuance system and document SF1080.
15	NC2119	Standard request form for special work and services for the U.S. Navy with a special number for entry into the billing issuance system and document SF1080.
16	GBL	Standard bill of lading for goods transported by the U.S. government, including information about the shipment such as weight, carrier container number, origin, and destination.
17	CBL	Standard bill of lading for goods transported by contractors, including information about the shipment such as weight, carrier container number, origin, and destination.

The above summary was intended to familiarize the audience with the type of evidence recorded in a concise manner. Given the examination of Claims 2 and 3 in Case B-1 before the Tribunal, it does not seem appropriate to provide specialized commentary on their rejection

1 Central Inventory System for International Logistics (CISIL).
2 Management Information System for International Logistics (MISIL).
3 These cards can be referred to as documents due to their external shape, and as transactions because of the information contained within them.
4 International Logistics Center International Program Extracts of Transmittals of Supply and Shipment Status Information between Iran and the United States

or acceptance. Additionally, detailing these documents would require a comprehensive study, potentially encompassing several volumes, which have been registered by the parties as appendices to various submissions in this case or presented during hearings. Therefore, the following discussion will only address the Tribunal's procedures in a general manner, outside the context of the case, and purely abstractly.

4. General Rules of Burden of Proof

One of the key points regarding the burden of proof is that while states have the freedom to choose the type and format of evidence to substantiate their claims before a tribunals, there are also limitations in this regard.[1] Generally, the burden of proof lis on the complianant, Establishing a right depends on proving a fact for which the claimant must provide evidence. However, it should be noted that creating a clear boundary between the claimant and the respondent concerning the burden of proof is not straightforward, and during litigation, the burden may shift multiple times between the claimant and the respondent.[2]

Article 24 of the UNCITRAL Rules, which has been reiterated unchanged as Article 24 of the Tribunals's procedural rules and used in all cases,[3] expresses a general legal principle regarding the allocation of the burden of proof, stating:

1. Each party is responsible for proving the facts it relies upon in support of its claim or defense.
2. If the arbitral Tribunal deems it necessary, it may require one party to submit, within a period determined by the Tribunal, a summary of the documents and other evidence it intends to present in support of the facts relevant to the subject matter of the claim or defense to the arbitral Tribunal and to the other party.
3. The arbitral Tribunal may request parties to provide documents, appendices, and other evidence at any time during the arbitration process, within a timeframe set by the Tribunal.

The International Court of Justice (ICJ, the Court) has repeatedly uses the general principle of *onus probandi*, a concept clearly reflected in the Court's jurisprudence. According to the Court, in the case of *Nicaragua vs. the United States*, the party seeking to establish the truth also bears the burden of proof. This approach has been accepted by the parties in many cases brought before the Court.[4]

The general rule of proof does not apply uniformly without considering the specific circumstances of each case. Several factors must be taken into account when applying this general rule. Firstly, the nature of the claim along with the type of evidence that must be presented for which the burden of proof rests with the claimant must be understood by the

1 Seyed Hossein Sadat Meydani, *International Proceedings - International Court of Justice - Evidence of Claims.* (Jangal, Tehran, 2012) 130.
2 Nasir Katouzian, *Proof and Evidence, Volume One, General Rules of Evidence, Admission and Document.* Mizan, Tehran, 8th edition, (2014) 62-65.
3 For instance, I.U.S.C.T., Judgment A15, para. 74: "... each party is responsible for proving the facts relied upon in support of the claim or defense regarding the compensation in question."
4 Seyed Hossein Sadat Meydani, Op. Cit. (2012) 252.

claimant. Secondly, the burden of proof on the claimant must be distinguished from that on the respondent, considering the issues that form part of the defense. Thirdly, the burden of proof may transfer from one party to the other. Consequently, if the claimant provides evidence supporting a claim's validity, the burden of proof shifts to the respondent. Fourthly, the limits and nature of the evidence presented—the standard of proof—depend on the nature of the claim, the legal obligations in question, and also on one party's access to the relevant evidence. Finally, both parties have a duty to cooperate in providing relevant evidence available to them to international courts.[1]

The United States has consistently claimed in its briefs in cases involving defense and military items, and even some of Iran's assets, such as the A-15, B-61, and particularly in case B-1, that the burden of proof rests with Iran, without considering one or more of the aforementioned conditions. This assertion by the United States aligns with the principle; thus, it is necessary to determine what Iran, as the claimant, must prove based on this principle. In a transaction, the general rule is that the buyer pays for goods or services, and in return, the seller provides those goods or services. Here, Iran must prove that it has paid for the goods and services, while the United States, as the seller, must demonstrate that it has delivered the goods or services.

It seems that in this case neither Iran nor the United States disputes the payment for the goods and services by Iran, and therefore, there is no need for Iran to fulfill the burden of proof regarding the payment as the claimant. What must be proven here is the fulfillment of obligations by the United States, and if this is established, Iran must then provide opposing evidence to prove that the United States has not fulfilled its obligations.

5. Claim and Prima Facie Case

"The duty of an advocate to demonstrate that sufficient evidence exists for raising an issue regarding the existence or non-existence of an alleged fact is primarily characteristic of common law systems... Nevertheless, the use of the phrase 'prima facie' also seems reasonable in the context of international arbitration.[2] Therefore, a prima facie case is one where the burden of proof is failed or the burden of adducing or production of evidence is met [3] and although this evidence may not be deemed conclusive, it is sufficient to establish a fact in the absence of contradicting evidence.[4]

Regarding the burden of proof in the prima faice case, frequently referenced and discussed by both parties in their submissions, the position of the Tribunal has consistently been that the claimant must present a prima faice case, and if successful, the burden of proof shifts to the respondent.[5] Numerous instances of the Tribunal's decisions and opinions referencing prima

1 Arab Chadegani, Op. Cit. (2005) 1646.
2 Durward V Sandifer, *Evidence Before International Tribunals* (The Foundation Press, Inc. 1975) 171.
3 I.U.S.C.T. Report, Vol. 31, *Dadras International v. Iran*, Award No. 567-213, 215-3 (7 November 1995) p. 251 (Aghahosseini, J., dissenting).
4 *International Ore & Fertilizer Corporation v. Razi Chemical Co. Ltd.*, AWD No. 351-486-3 (1988) (Brower, J., dissenting) 102.
5 Mojtaba Kazazi, *Burden of Proof and Related Issues* (Kluwer Law International 1996) 332.

faice evidence' or stating a claim based on prima facie case exist, some of which are outlined below.

In the case of *Reza Saeed Malek v. Iran*, where the claimant alleged the confiscation of three-fifths of his real estate and shares in two Iranian banks, the Tribunal stated: "The Tribunal believes that the decision regarding the properties in Shemiran has been appropriately made in accordance with Article 24(1) of the Tribunal's procedural rules, which stipulates that each party must bear the burden of proof based on the facts upon which their claims or defenses rely. It is clear that the claimant must first prove the facts upon which they rely. However, once sufficient evidence is presented to support their claim, we reach a point where the burden of proof shifts to the respondent."[1]

In the case of "*Lockheed Corporation v. Iran* (Ministry of War and Air Force)," the claimant alleged non-payment of invoices related to services rendered in the last quarter of 1978. In relation to one of the claims within the Lockheed case, the evidence presented was not strong enough to cover other aspects of the claim; nevertheless, the Tribunal considered Lockheed's assertion that nearly all evidence related to the claim remained in Iran and that the company had no access to it as 'prima facie evidence.' Taking into account the respondent's defense based solely on the lack of written evidence and the failure to provide necessary documents—thus transferring the burden of proof to the respondent[2]—the Tribunal ruled in favor of Lockheed.[3]

The conditions governing the general rule of burden of proof, including the principle of shifting the burden of proof upon the presentation of evidence deemed sufficient, have also been affirmed by the ICJ. In the case of Avena and Other Mexican Nationals (*Mexico v. United States*), Mexico presented compelling evidence that each of the 52 nationals in question was indeed a Mexican citizen. The United States argued that Mexico needed to do more than just assert this claim and provide the **C**ourt with evidence showing that none of these 52 individuals, in addition to holding Mexican nationality, held American citizenship. The Court rejected the United States' argument, stating that in this case, the United States had the burden to prove that each of these individuals was a citizen of that state, and concluded that the United States failed to establish the burden of proof regarding the American citizenship of individuals who also possessed Mexican nationality.[4]

6. Standard of Evidence

International arbitration Tribunals and judicial bodies consistently consider various features when assessing the criteria for establishing the burden of proof, such as the nature of the claim, the parties' access to evidence, and how the standard of proof is influenced by these factors. The ICJ, in the *Corfu Channel case*, explains how one party can rely on inferences from facts or circumstantial

1 I.U.S.C.T. Report, Vol. 19, *Malek v. Iran* (also *Reza Saeed Malek v. Iran*).

2 In the following cases, the burden of proof has also been transferred: I.U.S.C.T. Report, Vol. 29, *Kaysons International v. Iran*, Award No. 548-367-2 (28 June 1993) pp. 231-235, paras. 34-50.; I.U.S.C.T. Report, Vol. 09, *Touche Ross v. Iran* (1985) AWD. 197-480-1 p. 28.; I.U.S.C.T. Report, Vol. 26, *Combustion Engineering, Inc. v. Iran*, Award No. 506-308-2 (18 February 1991) pp. 79-80, para. 70.; I I.U.S.C.T. Report, Vol. 23, *Rockwell International Systems, Inc. v. The Ministry of National Defence*, Award No. 438-430-1 (5 September 1989) p. 178.

3 I.U.S.C.T. Report, Vol. 18, *Lockheed Corporation v. The Government of Iran, the Ministry of War and the Iranian Air Force*, (9 June 1988) AWD. 367-829-2 p. 292, para. 97.

4 *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004, p. 12, at pp. 41-42.

evidence when the relevant evidence is under the control of the opposing party. According to the Court, one cannot simply accuse Albania of knowledge of the mine-laying operation solely because a mine was discovered in its territorial waters, which led to the explosion of British warships. Conversely, it would not suffice to accept a response that overlooks the circumstances of the act and its perpetrators. In such situations, where one party controls the evidence, the other party often cannot provide direct evidence establishing liability; thus, that state should be allowed greater leeway to challenge the facts and circumstances surrounding the events without prejudice.[1]

Although the degree of proof required in practice before an arbitration tribunal cannot be precisely defined, the concept of "balance of probability" can be considered an appropriate standard. This standard should be distinguished from the "beyond the reasonable doubt" standard used in common law for proving criminal cases. The task of international arbitration tribunals is to evaluate the weight of the evidence presented regarding each specific issue, taking into account the nature of each claim. Therefore, the more complex the claim that either party seeks to prove, the greater the tribunal's obligation will be to ensure accuracy in establishing that claim through evidence. In deciding what evidence to present and how to present it, it is the tribunal itself that must determine the evidentiary value of that evidence.[2]

The Tribunal has consistently endeavored to encourage or compel the parties to prepare and present suitable evidence to facilitate proceedings and defenses. In cases where this has not been possible, the Tribunal has interpreted or modified its standards in response to the evidence and proof criteria presented by the parties. For instance, in the case of "*Oil Field of Texas Company v. Iran - National Iranian Oil Company*," the Tribunal acknowledged that all claims, including bribery, fraud, or forgery, require "evidentiary proof" that exceeds the typical standards applied in civil law for "preponderance or suspicion." [3]

Once the Tribunal has established its criteria, it assesses the weight of the parties' evidence based on these predetermined standards. In this context, the Tribunal places the burden of disproving the claims on the opposing party, and when either party fails to substantiate critical evidence, the Tribunal rejects that claim.

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1 It is clear that knou-leoge of the mineIaying cannot be imputed to the Albanian Government by reason merely of the fact that a minefield discovered in Albanian temtorial waters caused the explosions of which the British warships were the victims. It is true, as international practice shows, that a State on whose territory or in whose waters an act contrary to international law has occurred, may be called upon to give an explanation. It is also true that that State cannot evade such a request by limiting itself to a reply that it is ignorant of the circumstances of the act and of its authors. The State may, up to a certain point, be bound to supply particulars of the use made by it of the means of information and inquiry at its disposal. But it cannot be concluded from the mere fact of the control exercised by a State over its territory and waters that that State necessarily knew, or ought to have known, of any unlawful act perpetrated therein, nor yet that it necessarily knew, or should have known, the authors. This fact, by itself and apart from.other circumstances, neither involves prima facie resp~nsibility nor shifts the burden of proof. On the other hand, the fact of this exclusive temtorial control exercised by a State within its frontiers has a bearing upon the methods of proof available to establish the knowledge of that State as to such events. By reason of this exclusive control, the other State, the. victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be dowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in al1 systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion[*Corfu Channel Case*, Judgment of 9 April 1949, I.C.J. Reports 1949, pp. 4-18.]

2 Nigel Blackaby, Constantine Partasides, Allen Redfern, and Martin Hunter, *Redfern and Hunter International Arbitration* (Oxford University Press 2015) p. 388.

3 I.U.S.C.T. Report, Vol. 12, *Oil Field of Texas, Inc. v. National Iranian Oil Company*, Award No. 258-43-1 (8 October 1986) p. 315, para. 25. The Tribunal stated that " the burdun is on NIOC to establish its defense of alleged bribery in connection with lease agreement. If reasonable doubts remain , such an allegation cannot be deemed to establish.

For example, the Tribunal has examined the evidentiary submissions of the parties concerning the countemperaneous objection to a specific issue in the case by identifying the fundamental and crucial factor of the matter at hand. Given the significance of rejecting the opposing party's claims and the arguments presented by both sides in their submissions that emphasize the issue of countemperaneous objection, as well as the Tribunal's ruling that addresses the issue of the statute of limitations in some of Iran's claims, the Tribunal's approach to the issue of countemperaneous objection will be explored in detail.

7. Countemperaneous Objection as a Measure of Assessment

As previously noted, the Tribunal first seeks to identify the main point of contention between the parties when examining the subject of the dispute. It then considers whether the parties have made all reasonable efforts to resolve the issue before referring the matter to the Tribunal, or whether the nature of these disputes arose after the events of the revolution or specifically only after the filing of the lawsuit. The most important criterion that the Tribunal focuses on, is the behavior of the parties during the execution of the contract or agreement. The Tribunal assesses whether either party raised objections regarding the arbitrations currently in dispute or whether their activities continued without any issues.

To this evaluation, the Tribunal bases its practice on a legal principle found in commercial law known as the "principle of accepted accounting." It emphasizes the importance of the buyer's duty to raise specific and timely objections to the seller's actions. In the Tribunal's practice, the lack of objection is interpreted in two ways. In some cases, the buyer's failure to object to invoices creates the assumption that the invoices are correct. In other cases, the Tribunal concludes that upon receiving the invoices, the burden of proving timely objection is on the buyer.

The Tribunal's decisions indicate that, from its perspective, the obligation to object and provide timely notice can stem from three main reasons. First, timely objection to the contractor allows a fair opportunity to rectify deficiencies in their work and to receive their rights promptly. Second, if contractual obligations in complex transactions are not timely objected to, it creates difficulties in finding evidence and documentation. Third, timely objection and notice pertain to the conclusion of the transaction; after the transaction ends, the seller or obligor is not required to maintain extensive records and documents due to the possibility of legal disputes.[1]

In most cases assessed by the Tribunal using this standard, Iran, as the respondent, has attempted to justify its actions regarding the non-payment of invoices issued by American companies by rejecting the claimant's references and evidence, while filing counterclaims that have been largely dismissed by the Tribunal using the same standard. One notable case in this regard is "*Houston Contracting Company v. National Iranian Oil Company*," where Iran failed to provide evidence of the American company's alleged failure, leading the Tribunal to reject Iran's counterclaim due to lack of evidence.[2] In the cases of "*Collins Systems International*

1 I.U.S.C.T. Report, Vol. 17, *Iran National Airlines Co. v. United States (B-8)* (1987) AWD. 333-B8-2 p. 190, para. 11.
2 I.U.S.C.T. Report, Vol. 20, *Houston Contracting Co. v. National Iranian Oil Co.* (1988) AWD. 378-173-3 p. 119, para. 447.

v. Iranian Navy,"[1] "*Ford Aerospace and Communications v. Iran*,"[2] "*QuesTech v. Iran*,"[3] and "*Touche Ross v. Iran*,"[4] the Tribunal reiterated its position from the *Houston Contracting case*, stating that" it is repeatedly been hels that in the absence of countempraneous objection or disputes invoices or payment documents presented during the course are persumed to be correct."[5]

In the case of *Lockheed Corporation v. Iranian Air Force*, the Tribunal has repeatedly regarded the invoices and accompanying supporting documents, in the absence of a timely objection, as a claim bearing validity for the payment of the invoices. In the cases of *Rockwell International Systems v. Iran*[6] and *R.J. Reynolds Tobacco Company v. Iran*,[7] the Tribunal stated that if the respondent has received the disputed invoices or appears to have received them, the burden of proving the objection to the invoices will fall on the respondent.

Similarly, in the case of "*Avco v. Iranian Aircraft Industries*," Iran's counterclaim was dismissed by the Tribunal due to its failure to provide evidence showing Avco's refusal to deliver or repair the disputed items.[8] In the case of *Sedco v. Iranian Marine Industries*, the Tribunal asserted that the respondent's claim regarding the claimant's failure to fulfill obligations is proven false because no countemperaneous objection to the invoices submitted for …, the contention appearing for the first time in NIOC's submission here [1983].[9]

In the case of *D.I.C. Delaware v. Tehran Renovation Company*, the Tribunal stated that prolonged failure to express opposition to an invoice at least places the burden on the respondent to prove that the invoice was incorrect.[10] In *Austin Co. v. Iran*, the Tribunal, after examining the countemperaneous objection to the quality and timeliness of Austin's work as a factor of consideration, stated that none of the available evidence could prove any objections by Iran regarding Austin's performance prior to 1983. Thus, in rendering a decision in favor of the claimant, it dismissed the respondent's evidence due to the lack of necessary documentation.[11]

In the case of *Levitt v. Iran*, the countemperaneous objection to overpayment was introduced as a fundamental factor in the case, and the respondent's defense of unjustified overpayment to avoid payment of the invoices presented to the Tribunal was dismissed due to the absence of any evidence of a countemperaneous objection to the overpayment.[12]

In the case of the *Seismological Organization*, which may be one of the few instances where a ruling was made in favor of Iran, the Tribunal determined the fundamental issue of the case as the seizure of the claimed funds as compensation, set-off, and waiver. After reviewing the evidence from both parties, the Tribunal rejected the claimant's assertion of not receiving

1 I.U.S.C.T. Report, Vol. 28, *Collins Systems Int'l, Inc. v. Navy of the Islamic Republic of Iran* (AWD. 526-431-2) pp. 26, 57 (20 January 1992).
2 I.U.S.C.T. Report, Vol. 14, *Ford Aerospace and Communications Corporation v. Iran* p. 41.
3 I.U.S.C.T. Report, Vol. 09, *QuesTech, Inc. v. Iran* p. 126, para. 62.
4 I.U.S.C.T. Report, Vol. 09, *Touche Ross v. Iran* (1985) AWD. 197-480-1 p. 284, para. 297.
5 I.U.S.C.T. Report, Vol. 20, *Houston Contracting Co. v. Iran* pp. 24-25, para. 73.
6 I.U.S.C.T. Report, Vol. 23, *Rockwell International Systems, Inc. v. The Ministry of National Defence*, Award No. 438-430-1 (5 September 1989) p. 178, para. 109.
7 I.U.S.C.T. Report, Vol. 07, *R.J. Reynolds Tobacco Company v. Iran* p. 190.
8 I.U.S.C.T. Report, Vol. 19, *Avco Corporation v. Iran Aircraft Industries* (1988) AWD. 377-261-3 pp. 200, 222-223, para. 110.
9 I.U.S.C.T. Report, Vol. 15, *SEDCO Inc. v. Iran Marine Industrial Company* p. 72, para. 147.
10 I.U.S.C.T. Report, Vol. 08, *DIC of Delaware, Inc. v. Tehran Redevelopment Corp.* (1985) AWD. 176-255-3 p. 144, para. 164.
11 I.U.S.C.T. Report, Vol. 12, *Austin Company v. Mashine sazi Arak* p. 294, para. 31.
12 I.U.S.C.T. Report, Vol. 27, *Levitt v. Iran* (Case No. 210) p. 179, para. 107.

money from the respondent, arguing that despite being aware of the nature of the actions taken, no countemperaneous objection was made by the claimant.[1]

8. Burden of Producing Evidence

It is evident that based on the principle of cooperation in proceedings, which can be considered a construct of the principle of good faith, when one party possesses relevant evidence or has the ability to access it, they are not permitted to remain silent or conceal that evidence. It should be noted, however, that according to the same principle of good faith, this obligation should not be extended excessively to the point of causing inconvenience, complications, or excessive costs to the other party. According to some scholars, a strict reliance on the rule of "the burden of proof lies with the claimant" in determining the burden of proof in an international arbitration Tribunal, where there is no possibility of appeal from its decisions, conflicts with the flexibility and truth-seeking nature inherent in the arbitration process, which obliges both parties to make every effort to clarify the issues under discussion. Therefore, the respondent's duty under the principle of cooperation does not conclude with a general denial of the claimant's claims; rather, the respondent must provide explanations and documents that are solely in their possession to present to the International Tribunal.[2]

In this case, the Tribunal has applied the same approach and requested both parties to provide all documents and evidence they have for use in the proceedings. Following Iran's claim that a substantial portion of the evidence in this case was only in the possession of the United States, the Tribunal ordered the United States to submit all necessary information regarding the disputed sales agreements in this case.[3] The United States, while objecting to this order and stating that all documents were provided to Iran throughout the FMS program, complied with the Tribunal's order and submitted all delivery lists and invoices by the deadline set by the Tribunal.[4]

It is essential to note that when addressing one of the United States' requests to issue an order prohibiting the use of certain documents submitted by Iran,[5] the Tribunal rejected the United States' request, stating that the Tribunal could only ask the parties to provide what was necessary to advance the proceedings based on its jurisdiction, rather than obliging the parties to refrain from registering evidence. In this regard, the Tribunal may only determine during the proceedings whether to disregard the materials presented in specific evidence.[6]

The ICJ, while expressing a natural expectation from the claimant to provide relevant evidence to support its case in the *Pulp Mill on the River Uruguay case* (*Argentina v. Uruguay*), stated that this expectation should not imply that the respondent is not required to cooperate in

1 I.U.S.C.T. Report, Vol. 22, *Seismograph Service Corp. v. National Iranian Oil Co.*, AWD 420-443-3 (31 March 1989) pp. 55-56, para. 199.
2 Mojtaba Kazazi, Op. Cit. (1996) 119.
3 I.U.S.C.T., Case B1, (Claim No. 2-3), Full Tribunal, Order, 16 May 1984, Doc. 308 (I-U.S.C.T. Doc. 308).
4 The United States did not register delivery lists with the Arbitration Tribunal but provided these lists to the Legal Services Office of Iran in The Hague through four liaison representatives of that country. Therefore, the documents related to this matter have not been registered with the Tribunal's secretariat.
5 I.U.S.C.T., Case B1, Doc. 1360, (Claim No. 2-3), Full Tribunal, Request and Exhibits of the United States for an Order Directing the Production of Documents and Suspending the Proceedings until Claimant (I-U.S.C.T. Doc. 1360).
6 I.U.S.C.T., Case B1, Doc. 1551, (Claim No. 2-3), Full Tribunal, Order, 18 March 1998 (I-U.S.C.T. Doc. 1551).

producing evidence that is in its possession and may assist the Court in resolving part of the dispute.[1]

Thus, in this case, each party has acted to provide evidence within their possession, either at the request of the opposing party and the Tribunal's order or voluntarily to advance the case.

Conclusion

With the establishment of the Iran-United States Claims Tribunal (the Tribunal) to resolve disputes between the two states in financial matters, the process of registering various claims by the parties began. The registration of the "*Foreign Military Sales of Iran*" case (Claim B-1, the FMS), which included six claims by Iran and a counterclaim by the United States, initiated the proceedings for one of the largest arbitration cases in the world in terms of volume and financial value, which continues even after more than four decades. The various issues raised in this case, particularly the matters of evidence and proof, which have been extensively discussed in all submissions and hearings, are considered among the most challenging and impactful topics affecting the outcome of this arbitration. Notably, more than five years after the hearings of 25 individual claims related to Claims 2 and 3 in this case, the Tribunal has yet to render its decision on these matters.

In general, states have the freedom to choose the type and form of evidence in their claims; however, certain limitations, such as access to evidence, restrict this freedom. Article 24 of the UNCITRAL Rules, which has been reiterated unchanged as Article 24 of the Tribunal's procedural rules, places the burden of proof on the claimant. However, in many cases, this general rule is applied with consideration of the specific circumstances of each case. The Tribunal, in adhering to general principles, has consistently encouraged or compelled the parties to prepare and present suitable evidence to facilitate proceedings and defenses. When this has not been possible, it has interpreted or modified its standards in dealing with the evidence and proof criteria presented by the parties. After establishing its desired criteria, the Tribunal has assessed the weight of the parties' evidence according to the established standards. In this context, the Tribunal has placed the burden for disproving claims on the opposing party, and when either party has failed to substantiate critical evidence in the Tribunal's view, it has rejected that claim.

In this case, the United States contends that Iran, as the claimant, must substantiate its claims with reasoned evidence or at least provide claims bearing validity for its allegations. Due to its inability to do so in most individual cases, it argues that Iran's claims should be dismissed. Conversely, Iran asserts that as the buyer, it has paid for goods and services that it did not receive, and it is the United States that must now prove that it has fulfilled its contractual obligations in the individual FMS agreements with Iran. Each party has also registered a vast amount of information regarding the 1,126 individual cases within this dispute, claiming to have completed their evidence and documents while discrediting the opposing party's evidence.

In one of its partial rulings, the Tribunal referred to two categories of documents submitted by the United States and, in terms of evidentiary standards, did not accept them as comprehensive evidence but also did not deem them entirely without merit. Thus, both parties are attempting to utilize general principles of international law, which appear to have been accepted by the

1 *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, para. 163.

Tribunal as governing law in the dispute, to substantiate the credibility of their evidence before the Tribunal while undermining the credibility of the opposing party's evidence.

It seems that the current challenge for the Tribunal lies in determining the standards of evidence amid the complexity of the technical and financial documents presented by the parties, and the degree of precision of each based on the domestic laws and practices of each country. Regarding proof, it appears that, based on previous rulings, the Tribunal has accepted that the United States must demonstrate the fulfillment of its obligations. However, the Tribunal's previous decisions suggest that the lack of timely objection will also significantly overshadow a substantial portion of Iran's claims, especially since the FMS contracts contain a statute of limitations, the interpretation of which is also a point of contention between the parties.

Ultimately, it seems that efforts to clarify the technical aspects and enhance the precision in referencing the documents submitted by Iran, as well as to establish the criteria that the Tribunal will set in its future ruling regarding evidence, could be beneficial for the Iranian side in upcoming negotiations. These negotiations will occur according to the Tribunal's procedure after the issuance of similar rulings regarding the determination of damages between the parties, as well as providing lessons from this matter in the counterclaim that awaits hearings.

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The Role and Position of the Principle of Good Faith in the Iran-United States Claims Tribunal

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ABSTRACT

The Iran-United States Claims Tribunal can be regarded as one of the most important arbitration bodies in history. The arbitrators of this institution have referred to general principles of law, citing Article 5 of the Claims Settlement Declaration, in various cases for decision-making. Among the general principles of law, if not the most important, undoubtedly one of the most important principles is the principle of good faith. This principle plays a significant role in ensuring justice and fair adjudication. The present study, using library and documentary sources and a descriptive-analytical method, examines the role and status of the principle of good faith in the Iran-United States Claims Tribunal. The research findings show that the tribunal, recognizing the importance and role of the principle of good faith in ensuring justice and fair adjudication, has referred to and established a bridge between the two legal systems of Iran and the United States in various procedural and substantive instances. The principle of good faith has played an important role in the tribunal.

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Introduction

Traditionally, Article 38(1)(c) of the Statute of the International Court of Justice (ICJ) is referenced as the foundation for general principles of law, which can be defined as sources of law recognized by various states as the origin of rights and obligations due to their rational basis.[1] In other words, general principles of law are the legal sources that represent the common denominator across all legal systems. Marcelo Vázquez-Bermúdez, the Special Rapporteur of the International Law Commission on general principles of law, identifies three functions for this legal source: first, to fill legal gaps; second, to serve as the origin of many legal rules; and third, as a tool for interpreting rules.[2] In summary, general principles of law are among the most important legal sources, playing a crucial role in ensuring justice.

Among these principles, if not the most important, the principle of good faith is certainly one of the most significant general principles of law, serving as the foundation for many legal rules, including *estoppel, prohibition of fraud and corruption, prohibition of abuse of rights, prohibition of abuse of process,* and *the doctrine of clean hands*.[3] Furthermore, in the absence of specific rules, the principle of good faith *per se* can be invoked by the adjudicator to aid in their decision-making. This principle has been repeatedly cited by judges and arbitrators in international legal proceedings.[4]

The Iran-United States Claims Tribunal (hereinafter referred to as "the Tribunal") was established to resolve disputes between the two nations following the 1979 diplomatic crisis involving the U.S. Embassy in Tehran, subsequent to the issuance of the Algiers Accords in 1981. Many experts consider this tribunal to be the largest arbitration body in history. This institution has played a significant role in shaping arbitration practices in various

1 For further reading on the concept and nature of general principles of law, see: Fardrooz A and Amir Arjmand A, 'General Principles of International Law in the System of Public International Law' (1995) 1 *Legal Research* 16-17.; Mahmoodi Kordi Z, 'The Nature of General Legal Principles and Their Functions in International Law' (2018) 35 *International Legal Journal* 329-364.; Rezevska D, *General Principles of Law: Natural Rights, Legal Methods and System Principles* (Brill Nijhoff 2024).

2 United Nations, 'Third Report on General Principles of Law' A/CN.4/753 (2022).

3 Boroumand B F, Shahbazinia M and Arabiyaan A, 'The Good Faith of Parties in Arbitration (A Comparative Study in Iranian and English Law)' (2020) 24 *Quarterly Journal of Comparative Studies* 4.

4 For further reading on the judges' and arbitrators' invocation of the principle of good faith, see: Mirabasi S B and Saadati S Z, 'The Function of Recognized General Legal Principles in Civilized Nations in the Jurisprudence of International Arbitration Tribunals' (2023) 16 *International Legal Research* 23-46.; Alhavi Nazari H and Mohammadi A, 'Analyzing the Dimensions of the Principle of Good Faith in International Law in Light of Jurisprudence' (2015) 32 *International Legal Journal* 99-126.; Sipiorski E, *Good Faith in International Investment Arbitration* (Oxford University Press 2019).; Kolb R, *Good Faith in International Law* (Brill Nijhoff 2018).

commercial and investment matters, frequently citing the importance of general principles of law in issuing fair judgments and ensuring justice.[1] Among these principles, *the principle of good faith* holds considerable significance, and arbitrators have invoked it in various cases.

This research seeks to explore the role and significance of the principle of good faith within the Tribunal, structured in two main discussions. Given that the Tribunal serves as a connector between the two legal systems of Iran and the United States, the first discussion examines the theoretical foundations of the principle of good faith in both legal systems. Subsequently, in the second discussion, the manifestation and embodiment of the principle of good faith in the constituent documents and practices of the Tribunal will be studied.

1. Theoretical Foundations of Good Faith in Iranian and U.S. Law

The Tribunal has, over the years since its establishment and due to its unique composition of judges, become a meeting point for the two legal systems of Iran and the United States. Consequently, during the proceedings of a case, legal concepts from both legal systems are juxtaposed, leading to a clash of traditions in interpreting these concepts. This interplay has resulted in blended interpretations, making the study of these interactions essential for the development of legal knowledge. Therefore, it is necessary to first address the theoretical foundations of good faith and examine its approach and significance within both legal systems, which will be discussed in this section through two independent subsections.

1.1. The Principle of Good Faith: Conceptualization, Types, and Significance

Good faith, from a linguistic perspective, lacks a clear-cut and universally accepted definition. As evidence of this claim, a well-known definition states that good faith encompasses a mental state that includes: (1) honesty in belief or intention, (2) commitment to one's obligations or duties, (3) adherence to reasonable commercial standards in a specific business or transaction, or (4) absence of intent to deceive or gain an unfair advantage.[2] This complexity in definition has led some authors to adopt a negative approach, defining good faith as the absence of bad faith. Thus, good faith is characterized as the absence of intent to cause harm and the absence of actions contrary to reasonable standards.[3]

On the other hand, the term "good faith" appears deceptively simple at first glance; however, determining its instances and boundaries proves to be quite challenging.[4] In this respect, good faith lacks a coherent and consensus-based definition.[5] One American scholar has compiled

1 This issue has been addressed in various sources. For example, see: Mohebi M, *The Iran-United States Claims Tribunal: Nature, Structure, Function* (transl Mohammad Habibi) (Tehran: Shahr Danesh 2011) 188-199.; Khalilian SK, *Legal Claims of Iran and the United States Presented in the Hague Arbitration Tribunal* (Tehran: Public Publishing Company 2003) 194-196.

2 Bryan A. Garner (ed), *Black's Law Dictionary* (9th edn, West 2009) 762.

3 Jafarzadeh MQ and Simaei Sarraf H, 'Good Faith in International Contracts: A Universal Rule or an Exceptional Provision' (2005) *Legal Research* 41, 136. Also see: *Collection of Rulings of the Iran-United States Claims Tribunal, Volume 5* (Tehran: Presidency of the Republic, Deputy for Codification, Revision, and Publication of Laws and Regulations 2014) 279.

4 Jafarzadeh et. al., *ibid* 136.

5 International Centre for Settlement of Investment Disputes (ICSID), in the case of *Inceysa Vallisoletana, S.L. v. Republic of El Salvador*, stated: "Good faith is a general principle that governs legal relationships in all aspects and content." (*Inceysa Vallisoletana, S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26). Additionally, B. Cheng noted in his book *General Principles of Law as Applied by International Courts and Tribunals* that "good faith requires that each party should be able to rely on the statements of the other party, in such a way that a reasonable person would interpret those statements in that context." Quoted from *Collection of Rulings of the Iran-United States Claims Tribunal, Volume 2* (Tehran: Presidency of the Republic, Deputy for Codification, Revision, and Publication of Laws and Regulations 2012)

three fundamental definitions provided by courts in the United States regarding good faith, stating that good faith is either a sacred expression of fundamental contract law principles, a general limitation on bad faith without a specific meaning, or a barrier against reasserting waived privileges. In clarifying the apparent contradiction among these definitions, it is noted that the interpretation of good faith in the context of its application carries special significance, and depending on the stance, any of these meanings may be correct.[1]

Furthermore, while good faith is recognized as a general principle of law, the conduct associated with good faith, which is rooted in this progressive principle, is also significant. In this sense, good faith is seen not merely as a general principle of law but as the underlying spirit governing behavior, which, as previously indicated, stands in direct opposition to bad faith.

In terms of types of good faith, to assist the focus of this research, good faith can be divided into substantive and procedural categories. This means that good faith oversees the proper formation and fair execution of contracts as an additional force, and in the event of a breach and ensuing disputes, the resolution of these conflicts—from initiation to conclusion—requires another form of good faith, referred to as procedural good faith.[2] All the aforementioned instances exemplify behavior accompanied by good faith, which, it is important to reiterate, all derive from the same general principle of law.[3]

Although the concept of good faith has a long-standing history in human thought, it has never held as much significance as it does today. Currently, good faith is recognized as a general principle of law that serves as both a creator and an inspiration for various legal rules. This means that the functional role of this general principle is to give rise to different legal norms from its various aspects, each of which independently impacts and regulates relationships within distinct legal domains. Rules such as estoppel, the clean hands doctrine, the prohibition of abuse of rights, and the prohibition of fraudulent conduct[4] are all derived from this foundational principle.

Moreover, courts and arbitral tribunals typically do not directly invoke these principles unless no specific rule has emerged within a particular domain from that principle, or the principle itself is recognized as a rule and cited accordingly.

Another important point is that no legal system tolerates fraudulent acts that violate good faith, whether such bad faith occurs at the time of contract formation or during the exercise of other rights, or in the course of litigation.[5] Consequently, it can be stated that good faith occupies a lofty position in any legal system, even if it is not explicitly codified. It is clear that an entire legal system is built upon this concept, and one would be hard-pressed to find a legal system that does not recognize the necessity of good faith within its legal texts, even if there is no explicit provision demanding it. Legislators, jurists, or judges within that system would not accept that bad faith and fraudulent conduct are permissible in that legal framework, which would otherwise be foreign to the concept of good faith.

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1 Jafarzadeh et. al., *ibid* 136-137.

2 Boroumand et. al., *ibid* 4-5.

3 Section 19 of the Uniform Commercial Code of the United States defines good faith as "honesty in fact in the conduct or transaction."

4 Fraus legis

5 Boroumand et. al., *ibid* 18.

Lastly, it should be acknowledged that while this principle has experienced fluctuations in meaning and implications throughout history, and has seen periods of prominence as well as obscurity, it can be confidently asserted that good faith has manifested in legal thought at least since ancient Roman times and continues to be enshrined in the written law and judicial practice of various legal systems today.[1] For instance, it is reflected in Articles 101-2, 201-3, and 205 of the Uniform Commercial Code of the United States, as well as in certain legal provisions in Germany and various Iranian laws.

1.2. Comparative Study of the Principle of Good Faith in the Legal Systems of Iran and the United States

In the common law legal tradition, England does not have a suitable approach to good faith as a general rule for various reasons, such as the predictability of legal outcomes and effects. Conversely, in continental Europe and the Romano-Germanic legal tradition, there is a more open view of good faith.[2] The moralization of contracts is considered a value, and therefore, good faith is given special attention as a means to express this value. Traditionally, England has been the driving force behind the common law legal tradition; however, in the context of good faith, the United States has emerged as a precursor.

In the U.S. legal system, the principle of good faith and its implications are recognized. Judge Lord Mansfield was the first to argue in the case of *Carter v. Boehm* (1766) that good faith governs all contracts.[3] Although this argument faced opposition later, it ultimately opened the door for the application of this concept in the legal system, allowing the United States to distance itself from its traditional rival, England. As a result, with the existence of Articles 201-3 of the Uniform Commercial Code, the U.S. has become a leader in the recognition of the principle of good faith, influencing other common law jurisdictions that also recognize good faith.[4]

Some writers claim that it is not only Mansfield's opinion that led to the acceptance of good faith in U.S. law but also that of Professor Llewellyn, who was a primary drafter of the Uniform Commercial Code. He studied and taught in Germany and introduced the concept inspired by the rule of *Glauben und Treu* in German civil law into American private law.[5] Therefore, the American approach to good faith is considered an exception compared to others in the common law, leading some scholars to view the U.S. as a bridge between written and customary legal systems. They argue that, regarding the approach and acceptance of good faith, the United States plays a dual role: it is a pioneer in customary law and acts as a mediator concerning the meaning of this concept in written law.[6]

In the U.S. legal system, good faith is based on ethics, justice, necessity, and custom, encompassing a wide range of issues from preliminary negotiations, formation, execution,

1 Jafarzadeh et. al., *ibid* 141-142.
2 Article 242 of the German Civil Code (BGB) states: "The debtor is obliged to act in accordance with the requirements of good faith and fair dealing, taking into account customary practices."
3 Steyn, *The Role of Good Faith and Fair Dealing in Contract Law: A Hair-Shirt Philosophy* (1991) 138.
4 Jafarzadeh et. al., *ibid* 157.
5 Amini and Ebrahimi, *Good Faith in Contracts: From Theory to Practice; A Look at the Subject in Common Law* (2011) 26.
6 Jafarzadeh et. al., *ibid* 159.

interpretation, and enforcement of contracts in substantive law[1] to estoppel, the prohibition of concealing evidence, and the obligation to provide documents in procedural law.[2]

In the Iranian legal system, which is also attached to the civil law legal tradition and has a strong Islamic jurisprudential aspect, good faith is seen in various forms as scattered rules. While no one denies that the legal system (and indeed any legal system) is based on good faith, the existence of a general rule regarding good faith in Iranian law is questioned by some scholars. Some believe that there is no clear and independent rule regarding good faith in Iranian law and that it must be derived from examining different, and consequently exceptional, rulings.[3] Others argue that good faith is indeed a general rule in Iranian law.[4]

In Iranian law, although good faith is not explicitly recognized as a principle, some legal scholars contend that the outcomes of this principle can be found in various forms and titles. Good faith appears in rules related to deceit, undue advantage, and in titles such as bona fide possessor, bona fide holder of a commercial document, etc.[5] In this legal system, good faith is discussed in property law in terms of the effects of possession, whether in good faith or not, and in contract law at various stages, including before, during, and after the formation of contracts. Furthermore, its influence is not limited to these areas and can be traced in other domains as well.[6]

2. The Manifestation of the Principle of Good Faith in the Iran-United States Claims Tribunal

In this section, the Tribunal's approach to the concept of good faith will be examined. The first part will analyze the basis for invoking good faith in the Tribunal's constituent documents, while the second part will address the application of good faith in the Tribunal's jurisprudence, divided into procedural and substantive aspects of this concept.

2.1. The Principle of Good Faith in the Governing Rules of the Tribunal

The rules of the Iran-United States Claims Tribunal, as stated in Paragraph 1 of Article 33 of the amended UNCITRAL rules, specify that "the Tribunal shall decide all cases based on respect for the law and the selection of those legal provisions and principles of commercial and international law that, in the Tribunal's judgment, are applicable, while also considering commercial customs and relevant contractual provisions." This article aligns perfectly with Article 5 of the Dispute Resolution Declaration.[7]

As mentioned in Paragraph 1 of Article 33 and Article 5 of the Dispute Resolution Declaration, the Tribunal's judges are permitted to invoke general principles of law that they

1 Jafarzadeh et. al., *ibid* 199-229.

2 Boroumand et. al., *ibid* 4-5.

3 Katouzian and Abbaszadeh, *Good Faith in Iranian Law* (2013) 168, 181.

4 *ibid* 179-180.

5 See also *ibid* 167-186 and Hajipour, *Manifestations of the Principle of Good Faith in Imamiyyah Jurisprudence* (2011) 94-123.

6 Various provisions from different laws, including Article 96 bis 1 of the Maritime Law (2012), Article 680 of the Civil Code, Article 154 of the Commercial Code, etc.; for a detailed list, see Katouzian and Abbaszadeh, *ibid* 167-186. For further reading on the concept of good faith in the common law and Romano-Germanic tradition, see: Davies, *Good Faith in Contract Law* (2020).; Beatson and Friedman, *Good Faith and Fault in Contract Law* (1997).; Brownsword, Hird and Howells, *Good Faith in Contract: Concept and Context* (1999).

7 Statement of the Democratic and Popular Republic of Algeria on the Settlement of Disputes between the United States of America and the Islamic Republic of Iran (Dispute Settlement Statement) (29 October 1980).

deem applicable. It has been noted earlier that the principle of good faith and its derivatives are among the most important general principles of law[1] and serve as the foundation for many subsidiary rules that arise depending on the subject matter. Therefore, when invoking the principle of good faith, the judges of this Tribunal are committed to adhering to the limits of the laws governing the proceedings, and thus no disruption is perceived from this perspective.

2.2. The Principle of Good Faith in the Tribunal's Jurisprudence

The Tribunal has referenced the principle of good faith in various rulings. This ranges from procedural issues such as the admissibility of claims and jurisdiction to substantive issues like expropriation. The Tribunal has also frequently utilized the principle of good faith when interpreting its constituent documents. In summary, the Tribunal recognizes the importance of good faith as a cornerstone for fair adjudication. This discussion will categorize the Tribunal's jurisprudence regarding the principle of good faith into two main topics: procedural issues and substantive issues.

Before delving into the discussion, it is crucial to highlight the distinction between the principle of good faith and conduct in good faith. This distinction appears to have been overlooked by many authors and legal scholars writing about the Tribunal. In other words, the principle of good faith is a primary source of law from which various obligations such as estoppel, prohibition of fraud and corruption, abuse of rights, abuse of process, and the clean hands doctrine have emerged. It can also be invoked independently and in the absence of specific rules. In contrast, conduct in good faith refers to the behavior of parties aligning with these established norms.

Just as there exists a difference between equity and equittable conduct, we find that equity in common law systems is considered an independent legal institution, whereas equittable conduct is understood universally among people. Everyone has an understanding of equittable conduct, but to grasp the concept of equity requires careful study of its precedent and practice. Thus, we believe that in many instances within the Tribunal's jurisprudence, what is presented is not an invocation of the principle of good faith as a rule, but rather attention to conduct in good faith as a consequence of the principle. Many instances where the term "principle of good faith" is used in the Tribunal's decisions reflect this misunderstanding; rather, it would be more accurate to reference conduct in good faith, as in most cases, good faith is referred to not as a general principle of law that generates rights and obligations, but as the prevailing spirit of a certain conduct.

2.2.1. The Manifestation of the Principle of Good Faith in Procedural Issues in the Tribunal's Jurisprudence

Procedural issues in arbitration encompass a wide range of topics governing the arbitration process, including matters such as jurisdiction, the admissibility of claims, and issues related to the taking of evidence. Ensuring equity and efficiency in these procedural matters is vital for the integrity of the arbitration process. In this context, the principle of good faith plays a crucial role in guiding these procedural issues and has been invoked by the Tribunal in various instances.

1 United Nations, 'Third Report on General Principles of Law' A/CN.4/753 (2022).

Regarding the issue of jurisdiction, the Tribunal's handling of the matter of dual nationality is noteworthy. It is essential to mention that the Tribunal, based on Article 2 of the Dispute Resolution Declaration, has specific jurisdiction in handling claims, and the necessity of adhering to good faith in interpreting this article has resulted in an independent jurisprudence in this regard. In this context, when a claim was brought by a dual national of Iranian-American descent who had benefited from their Iranian nationality, the Tribunal invoked the principle of good faith and related concepts such as prohibition of abuse of rights, prohibition of abuse of process, and the clean hands doctrine to issue a ruling of inadmissibility or dismissal of the claim.

For instance, the Islamic Republic of Iran, in its defense in Case No. 419 (*Rouhollah Karoubian v. The Government of the Islamic Republic of Iran*), stated that "since the claimant has filed a claim as an American citizen before this Tribunal and as his claims pertain to interests that, according to the notice decision in Case 'A/18'[1] and the principles of clean hands, estoppel, good faith, and prohibition of abuse of rights—which are practiced in international law—are inadmissible."[2] The Tribunal concluded that this could constitute an abuse of rights.

Additionally, in its defense in Case No. 266 (*Mousa Aryeh v. The Government of the Islamic Republic of Iran*), Iran asserted that "since the claimant has filed a claim as a citizen of the United States and his claim involves benefits that, under Iranian law, are exclusively for Iranian citizens, therefore, the notice in Case 'A/18' prevents his claim. The respondent states that mere ownership of immovable property in Iran by a dual national, in itself, prevents the Tribunal from awarding damages for the claim, and thus the notice serves to 'filter claims that are not admissible at the substantive hearing stage.' It does this through the application of international law principles, including abuse of rights, good faith, clean hands, misrepresentation of facts, concealment of material facts, estoppel, and state responsibility."[3] The Tribunal similarly concluded that this could constitute an authorization for an abuse of rights.

In Case No. 485 (*Frederica Lincoln Riahi v. The Government of the Islamic Republic of Iran*), the Islamic Republic stated, "The claimant is prohibited from invoking her American citizenship, as allowing such a claim would constitute an abuse of rights and contradict the principles of good faith and clean hands."[4] The Tribunal determined that invoking American citizenship could amount to an authorization for an abuse of rights.

In Case No. 269 (*Albert Broukhim v. The Government of the Islamic Republic of Iran*), the Tribunal faced a situation regarding the modification of the date of the claim and recognized that changing this date could affect the claimant's nationality and consequently disrupt the Tribunal's jurisdiction. Therefore, in the justifications for the ruling, when intending to make a preliminary decision regarding the claimant's effective nationality, it stated: "Although the Tribunal generally assumes that the claimant has specified the date of the claim in good faith,

1 This warning states: "In cases where the Tribunal rules on the basis of the predominant and effective nationality of the claimant, the other nationality of the claimant may remain relevant and valid in terms of the nature of the dispute." (A/18 Decision No. 32 (10 May 1984)). See Aqa Hosseini M, 'An Examination of the Positions and Views of the Islamic Republic of Iran and the United States in Case A/18 of the Iran-United States Claims Tribunal Regarding Dual Nationality' (1985).

2 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 11 (Tehran: Deputy for Codification, Revision, and Publication of Laws and Regulations, 2016), 256.

3 *ibid* 645.

4 *ibid* 949.

should it later appear, after considering the arguments related to the other matters in the case, that the claim actually arose before the date of acquiring Iranian or American nationality, as applicable, this assumption does not prevent the Tribunal from declaring the claim inadmissible in this arbitration."[1]

Another important point to note is that the necessity of adhering to good faith (or, as previously mentioned, conduct in good faith) during the proceedings is not limited to the parties involved but extends to the arbitrators as well. In Case No. 35 (*R.J. Reynolds Tobacco Company v. The Government of the Islamic Republic of Iran and the Iranian Tobacco Company*), one of the adjudicating judges, in a separate opinion, elaborated on a situation that, in his view, detracted from "good faith in the proceedings." He specifically noted that the failure to hold a deliberative session was detrimental to a fair process: "It is assumed that arbitral awards should be issued after sufficient deliberation among the arbitrators regarding the matters raised in the case that have been discussed and argued by the parties. The present award against the respondents is based on unsubstantiated arguments concerning issues that, due to their lack of relevance to the points at dispute, were not discussed or deliberated by the parties. Therefore, the award is legally null and void."[2]

In conclusion, the Tribunal has addressed cases involving dual nationality with an emphasis on the principle of good faith alongside other derived rules such as clean hands, estoppel, and the prohibition of abuse of rights and process. In these instances, the Tribunal has repeatedly stated that individuals with dual nationality cannot exploit their dual status to gain unfair advantages or circumvent legal obligations. By invoking the principle of good faith and the related rules, the Tribunal ensured that the claimant's assertions were made with honesty and integrity, thereby preserving the legitimacy of the arbitration process and leading to a fair adjudication. Thus, it can be concluded that the principle of good faith plays a significant role and holds an important position in procedural matters within the Tribunal's jurisprudence.

2.2.2. The Emergence of the Principle of Good Faith in Substantive Issues in the Tribunal's Jurisprudence

Unlike procedural issues, which pertain to the processes governing arbitration, substantive issues encompass the main matters in dispute during arbitration and include the rights and obligations of the parties involved. Similar to procedural matters, the principle of good faith plays an important role in guiding substantive issues as well.

For example, the Tribunal's approach to expropriation can be referenced, whereby it considers expropriation that does not serve the public interest to lack legitimacy based on the principle of good faith. In Case No. 56 (*Amoco International Finance Corporation v. The Government of the Islamic Republic of Iran, National Iranian Oil Company, National Petrochemical Company, and Khark Chemical Company with Limited Liability*), the Tribunal states: "Expropriation whose sole purpose is to evade governmental contractual obligations cannot be deemed legitimate under international law. Such expropriation is fundamentally

1 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 9 (Tehran: Presidential Office, Deputy for Codification, Revision, and Publication of Laws and Regulations, 2015), 650.

2 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 5 (Tehran: Presidential Office, Deputy for Codification, Revision, and Publication of Laws and Regulations, 2015), 318.

contrary to the principle of good faith, and deeming it legitimate conflicts with the established rule that a government may bind itself via contracts with foreign companies."[1] This ruling illustrates the essential role of the principle of good faith in the Tribunal regarding matters such as expropriation. The Tribunal examines whether expropriations were conducted in pursuit of public interest or merely to evade contractual obligations.[2]

In this context, it is important to note that Judge Richard M. Mosk, in justifying a dissenting opinion in Case No. 100 (*Hood Corporation v. The Islamic Republic of Iran, Central Bank, and Bank Mellat*), notes that while the right to impose currency restrictions for the sake of public benefit is recognized for governments, if such restrictions lead to a form of control over foreign nationals' investments, then this action, although initially legitimate, becomes impermissible due to its contravention of good faith. Therefore, such authority must be exercised reasonably and in good faith.[3]

Another aspect of reasoning based on good faith (or, as previously mentioned, conduct in good faith) manifests in the interpretation of contracts. It has been noted that in various legal systems, one of the most significant domains for invoking good faith is in contract law, particularly in the interpretation of concluded agreements. As seen in Case No. 180 (*Harnischfeger Corporation v. Ministry of Roads and Transportation, Organization for the Development and Modernization of Industries of Iran, Arak Machine Manufacturing, and Pars Machine Manufacturing*), the Tribunal states: "The Arbitration Tribunal believes that it would be contrary to the principle of good faith to allow Harnischfeger to later invoke a contract against the manufacturer when the fundamental conditions for its conclusion have not been met at all."[4] Interestingly, this case references Article 242 of the German Civil Code (the rule of Glauben und Treue), which was previously mentioned in discussing the concept and position of good faith in various legal systems.[5]

Moreover, in the execution of contracts, performance in good faith leads to legal consequences, and a breach of this principle is deemed a basis for liability in the Tribunal's jurisprudence. As the claimant in Case No. 494 (*International Systems and Controls Corporation v. National Iranian Gas Company, National Iranian Oil Company, and the Islamic Republic of Iran*) stated, "Failure to perform any express or implied contractual duty in good faith, without any legal excuse, constitutes a breach of contract and holds the breaching party liable for damages."[6] Consequently, the Tribunal considers the respondent's continual non-compliance with obligations, which had previously been communicated to them, as inconsistent with performance in good faith.[7]

The Tribunal has frequently invoked the principle of good faith in various cases when interpreting the Algiers Accords. For instance, in Case No. 'A/11' (commonly known as the

1 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 8, 220.

2 It is observed in the Tribunal's rulings that discriminatory behavior towards a foreigner, aimed at coercing the foreigner to relinquish property to the state or to sell it at a distress price, is considered contrary to good faith (see: *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 9, 353, para 26).

3 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 5, 227.

4 *ibid*, 298.

5 See also *ibid*, 550, footnote 3.

6 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 9, 373.

7 *ibid*, 384, para 109.

Assets of the Pahlavi Family), it is noted that "there is no deadline established in the Algiers Accords for the issuance of the aforementioned orders. In the absence of an explicit deadline, the Tribunal invokes the principle of good faith in treaty interpretation and concludes that the United States was obliged to issue the said orders 'within a reasonable time.' Therefore, the Tribunal must examine what such a reasonable period could have been under the existing circumstances."[1] This ruling illustrates the significant role that the principle of good faith plays in the interpretation of legal rules. By applying the principle of good faith in its interpretation, the Tribunal ensured that justice is achieved by adhering to the essense of the law rather than merely its text.

Additionally, the Tribunal has sought to interpret the Dispute Resolution Declaration in good faith. In this context, in Case No. 'A/18', two judges in a dissenting opinion state: "It is particularly important to recall that the Algiers Accords were concluded with the spirit of good faith, and that same spirit should govern their execution or interpretation. Therefore, yielding to the current inclination of the United States, which apparently seeks to transform the Accords (originally considered a peaceful resolution) into a means of political pressure on Iran, has no justification."[2]

In conclusion, similar to procedural issues, the Tribunal has systematically utilized the principle of good faith in addressing substantive matters and has sought to facilitate a fair adjudication by invoking the derivatives of this general principle of law (including conduct in good faith, as this study has claimed).

Conclusion

General principles of law hold a significant role and position among legal sources. According to the report of the International Law Commission regarding general principles of law, this legal source can play an important role in filling gaps in legal rules or obligations, as well as serving as a tool for interpreting legal norms. Among these general principles, the principle of good faith stands out as prominent and important in both domestic legal systems and international law. This principle underlies various legal rules, such as estoppel, the prohibition of fraud and corruption, abuse of rights, abuse of process, and clean hands, indicating its widespread influence on the legal system.

Within the framework of the Iran-United States Claims Tribunal, under Article 33(1) of the amended UNCITRAL rules and Article 5 of the Dispute Resolution Declaration, the judges of the Tribunal are permitted to invoke general principles of law that they deem relevant. Therefore, when invoking the principle of good faith, the commitment of the judges to adhere to the limits imposed by the governing laws during proceedings is recognized, and this does not introduce any disruption. Indeed, the invocation of the principle of good faith has been evident in various procedural and substantive instances within the Tribunal's jurisprudence.

Regarding procedural issues, the Tribunal has addressed cases of dual nationality by invoking the principle of good faith, along with prohibitions against the abuse of rights, the

1 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 2, 158.
2 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 2, 622.

abuse of process, and the clean hands doctrine, resulting in rulings of inadmissibility or dismissal of claims. Additionally, in substantive matters, the Tribunal has deemed expropriations lacking legitimacy based on the principle of good faith when they do not serve the public interest. The Tribunal has also engaged in the interpretation of rules based on the principle of good faith in various instances.

Ultimately, the principle of good faith occupies an important role and position in the Tribunal's rulings, and the Tribunal has realized this significance by establishing a connection between the two legal systems of Iran and the United States, which are rooted in different legal traditions. This achievement is remarkable in the realm of international dispute resolution.

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Interpretive Awards in Iranian and International Arbitration Law: Lessons from the Iran-United States Claims Tribunal

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ABSTRACT

Notwithstanding the explicit provision for interpretive awards under Article 32 of Iran's Law on International Commercial Arbitration, their application in domestic arbitration remains contentious. However, their existence may be inferred from instruments such as Article 9 of the 2022 Arbitration Fee Regulations. The absence of a comprehensive definition for interpretive awards has perpetuated conceptual confusion and facilitated their misuse as substitutes for revision procedures—a problematic tendency that, when considered alongside the significant benefits of properly utilized interpretive awards, underscores the critical importance of precisely understanding this legal mechanism. Interpretive awards must be conceptualized within established legal frameworks including res judicata and functus officio. Crucially, such awards address only those ambiguities arising from either drafting deficiencies or divergent party interpretations, rendering them fundamentally distinct from supplementary or corrective awards. In international law, interpretive awards appear in various instruments including the 1976 UNCITRAL Rules (which govern the Iran-U.S. arbitration agreement). International practice demonstrates that valid interpretation requests must satisfy specific criteria: (1) demonstration of genuine ambiguity; (2) pursuit of clarification rather than substantive modification; (3) direct relevance to the award's scope; and (4) grounding in established factual circumstances. Proper requests should additionally include: (a) the ambiguous text; (b) explanation of the ambiguity; and (c) the parties' conflicting interpretations. The jurisprudence of the Iran-U.S. Claims Tribunal confirms that failure to meet these requirements has resulted in uniform rejection of interpretation requests.

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Introduction

The era of absolute judicial dominance has given way to alternative dispute resolution methods, among which arbitration stands as a prominent institution. Recognized for its proven effectiveness and numerous advantages in addressing both domestic and international conflicts, arbitration has gained increasing acceptance.[1] Yet it is important to recognize that arbitration does not always bring disputes to a definitive end. In some cases, it may itself become the source of new disagreements—particularly when arbitrators issue ambiguous awards, leaving the parties uncertain about the intended meaning.At times, this uncertainty arises not from genuine ambiguity but from bad faith. The declining trust in arbitrators has led to reduced voluntary compliance with arbitral awards, transforming enforcement—once a secondary concern—into a major procedural challenge.[2] The finality inherent in arbitral awards has further driven dissatisfied losing parties, who lack conventional avenues for appeal, to resort to desparate measures in an attempt to alter unfavorable rulings. This trend has resulted in the misuse of interpretive awards as a means to seek de facto revisions, creating significant complications in both domestic and international dispute resolution forums.

This article seeks to prevent such misuse by first examining the conceptual boundaries of interpretive awards, their interaction with the principles of *res judicata* and *functus officio*, and the distinctions that set them apart from similar legal mechanisms. Subsequent sections will explore their basis in various legal systems, doctrinal perspectives, and international case law—particularly rulings from the International Court of Justice (ICJ) and the Iran-United States Claims Tribunal (IUSCT)[3]—to establish a clear and precise understanding of their proper application.

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1 Among the advantages of arbitration are time and cost efficiency, the ease of enforcing arbitral awards, and the flexibility in presenting evidence before the arbitral tribunal (Mohammadi, Sam, *Preliminary Objections and Arbitration* (1st edn, Majd Publication 2024) 181–184.). These benefits are enumerated differently across various sources, with some listing up to ten (Alidadi Deh-kohneh, Ali and Abuzar Jowhari, *Arbitration Law in Practice: With Iranian Judicial Procedure and an Analysis of UNCITRAL Regulations* (7th edn, Judiciary Publication 2024) 133137-.) or even eleven (iBB Solicitors Institute) advantages. Some of these, such as award recognition and ease of enforcement, are directly related to the feasibility of arbitral award interpretation.

2 Currently, the time spent on post-award disputes has significantly increased, and challenges to arbitral awards have become commonplace (Wong, Venus Valentina and Dalibor Valinčić, *The Arbitral Award: Form*, Global Arbitration Review,17 May 2023.).

3 The significance of the Iran-United States Claims Tribunal is undeniable. Some have even asserted that it constitutes the largest arbitration in history; see for instance, Richard Lillich (ed), *Iran-United States Claims Tribunal 1981–1983* (University Press of Virginia 1984)., cited in Mozafari, Ahmad and Mehdi Nikfar, *Selected Judgments of the Hague Court* (vol 2, Ghoghnous Publication 2000) 7.

1. The Concept of Interpretive Awards,[1] Their Rationale and Significance

In certain arbitral proceedings, following the issuance of a final award,[2] parties may identify deficiencies that - while not constituting legal errors or serious procedural defects sufficient to warrant annulment or non-recognition - nevertheless render the award seemingly erroneous or incompatible with their legal arguments. Such deficiencies may stem from either fundamental miscalculations or the arbitral tribunal's failure to issue an explicit ruling on claims that were fully pleaded. Alternatively, they may result from the tribunal's articulation of its findings being formulated in a manner that generates further disputes rather than resolving them, leading to divergent interpretations by the parties.

These circumstances have necessitated the development of specific remedial mechanisms: correct`ive awards, supplementary awards, and interpretive awards. While limited in scope, these instruments carry significant potential consequences for award enforcement and implementation.[3]

As a fundamental principle, every arbitral award must maintain clarity and conclusiveness, enabling all relevant parties - the prevailing party, the losing party, and any competent enforcement authorities - to precisely understand their respective rights and obligations. However, awards occasionally contain ambiguities requiring interpretation. Such ambiguities may originate from: (1) the drafting style and terminology employed by the arbitrators; (2) divergent interpretations by the parties; or (3) the perspective of implementing authorities.

When such interpretive needs arise, the arbitral tribunal bears the responsibility to provide clarification upon a party's request. While this interpretive function serves a necessary procedural purpose, it constitutes a highly sensitive mechanism that remains particularly vulnerable to abuse. In most instances, ambiguities become apparent during enforcement proceedings, though parties may identify them earlier and seek clarification. A paradigmatic example would be an award that imposes payment obligations on multiple respondents without specifying whether their liability should be "joint and several" or "several", and if several, whether their respective shares should be equal or proportionate.[4]

Stated differently, arbitral awards - like any legal text - may suffer from ambiguities or brevities.[5] Such deficiencies manifest when: (a) disputes arise regarding the precise meaning of particular terms or phrases; or (b) despite clear language, disagreements emerge about whether specific cases fall within the award's scope.[6]

1 For an understanding of the literal meaning and distinctions among types of interpretation—such as literary, jurisprudential, historical, doctrinal, personal, statutory, judicial (in both broad and narrow senses), restrictive, logical, and expansive interpretation—see Jafari Langroudi, Mohammad Jafar, *Legal Terminology* (33rd edn, Ganj-e Danesh Publication 2020) 176–178. The present article's focus on "interpretation" pertains specifically to the interpretation of arbitral awards, a concept that will be clarified throughout the discussion. Initially, it suffices to note that, in this context, "interpretation" refers to discerning the intent of the award's issuer.

2 Even procedural orders and preliminary rulings may contain ambiguities or errors. However, given their secondary importance, they fall outside this article's scope. Furthermore, this study addresses ambiguities arising from arbitrators' actions, not those stemming from a claimant's unclear submissions.

3 Lal, Hamish, Brendan Casey, Tania Iakovenko-Grässer, Léa Defranchi, *Revision, Interpretation And Correction Of Awards And Supplementary Decisions*, 6th Edition, Investment Treaty Arbitration Review, June 2021, 439.

4 Yousefzadeh, Morteza, *Arbitration Procedure* (1st edn, Sahami Enteshar Publications 2013) 231.

5 Brevity resulting in uncertainty or duality in wording and comprehension— presents another obstacle to enforcement (Mousavi, Seyed Abbas, *Enforcement of Civil Judgments* (vol 4, 1st edn, Ganj-e Danesh Publication 2024) 47–57.

6 Mirshekari, Abbas and Mohammad Kazem Mahtabpour, *The Competent Authority for Interpreting Arbitral Awards* (2020) 50(3) Private

Common examples of ambiguous awards include:

- Orders for delivery of specified quantities of gold without indicating purity standards;
- Eviction orders that fail to define the relevant property's precise boundaries.[1]

The interpretive process in this context parallels principles in Islamic legal theory (*usūl al-fiqh*) concerning uncertainty in communicative intent - situations where a speaker's expression leaves the listener genuinely uncertain about its intended meaning.[2]

Within international legal instruments, interpretive awards are referenced under various terminologies. The term "clarification" operates as a functional equivalent to "interpretation," denoting the process of ascertaining the arbitral tribunal's genuine intent as manifested in both the award's reasoning and its dispositive provisions.[3]

As previously established, following an award's issuance, either of both parties may request the arbitrators to provide an interpretation clarifying the award's precise meaning and scope.[4] However, dissatisfied parties frequently succumb to the temptation of exploiting this mechanism to effect substantive revisions of the decision—a misuse of a process designed exclusively to resolve genuine ambiguities concerning interpretation and implementation.[5]

Moreover, parties occasionally introduce unauthorized additions under the guise of interpretation. Such additions not only prove unnecessary but fundamentally alter the award's substantive content.[6] This practice assumes particular significance given the frequent misuse of interpretive awards as a last recourse by losing parties seeking to modify unfavorable decisions, thereby underscoring the critical importance of properly understanding this legal mechanism.

It should be noted that, upon closer examination, some scholars have distinguished between the two terms *"interpretive arbitral award"* and *"arbitrator's interpretation of an arbitral award."* An *interpretive award* is one in which the arbitrator provides their interpretation of a text that is the subject of dispute between the parties, typically a provision within their underlying arbitration agreement. Indeed, in some contracts, the scope of the arbitration clause is limited to contractual interpretation, or the interpretation of the contract itself falls within the arbitrator's jurisdiction. Upon the request of one or both parties, and in response to a dispute

Law Studies Quarterly, 592; For further analysis of the nature of award interpretation, see: Raeisi, Reza, Alireza Iranshahi and Hamidreza Salehi, *The Nature and Effects of Court Decisions in Interpreting Arbitral Awards* (2024) 25(2) Legal Research Quarterly, 203–220.

1 For additional examples, see: Mousavi, Op. Cit., 2024, 46–57.

2 Beyond traditional sources, modern concepts must also be cautiously considered. A notable term in literary theory and philosophy is **The Death of the Author**, introduced by Roland Barthes in a 1967 essay. This theory questions whether meaning resides in the author's intent or the reader's interpretation, emphasizing that texts acquire new meanings across different cultural and historical contexts. While this perspective has gained traction in the arts, its applicability to legal interpretation—particularly in Iran, where non-issuer interpretation remains contentious—warrants further scrutiny.

3 Baptista, Luiz Olavo, *Correction and Clarification of Arbitral Awards* (Discussion Paper, ICCA Congress, Rio de Janeiro, 25 May 2010) 3.

4 Blackaby, Nigel, Constantine Partasides, Alan Redfern and Martin Hunter, *Redfern and Hunter on International Arbitration* (6th edn, OUP 2015) 1018-

5 UNCITRAL Report of the Secretary-General on the Draft UNCITRAL Arbitration Rules, 12 December 1975, UN Doc A/CN.9/112/Add.1, p. 180.

6 An example of conflating interpretative and corrective awards appears in Ruling No. 9409970223700245 (16 April 2015) by Branch 37 of the Iranian Court of Appeals, which criticized an arbitrator's attempt to issue a new award under the guise of interpretation: "The initial award was ambiguous and thus unenforceable under Article 28 of the Civil Procedure Code. While the court sought clarification to resolve this ambiguity, the arbitrator lacked grounds to issue a new award after the expiration of the statutory period under Article 478 of the Code of Civil Procedure." (Khodabakhshi, Abdullah and Maryam Abedinzadeh Shahri, *The Role of the Arbitrator After the Issuance of an Award* (2019) International Law Journal 61, 209)

over contractual interpretation, the arbitrator may issue an *interpretive award*... .[1] However, since this distinction has not been observed in most sources, and to maintain consistency with related literature, this paper will also use the term *interpretive award* in its broad sense, while adopting the second meaning—i.e., the *arbitrator's interpretation of an arbitral award*—as our intended definition.

As will be discussed, prior to the Hague Conventions, arbitration agreements generally did not include provisions regarding the interpretation of issued awards. Consequently, before this period, requests for interpretation were rare and sporadic. One notable example is the *Portendic Affair*,[2] where the dispute centered on the interpretation of an earlier award rendered between the governments of France and Britain. As a result, the British Cabinet requested Baron de Büllow to provide an unofficial opinion on the meaning of the arbitral award.[3] The significance of Baron de Büllow's opinion lay in its status as the first formal interpretation of the *Portendic* arbitral award, which later served as a reference for interpreting arbitral awards in subsequent cases.

Early international conventions, such as the Geneva Protocol of 1923[4] and the Geneva Convention of 1927,[5] lacked provisions on the interpretation of awards.[6] During the Second Hague Conference, the Italian delegation advocated for the recognition of the principle of recourse to arbitral award interpretation, while the British delegation viewed this matter as falling within the jurisdiction of a new arbitration.[7] Article 82 of the 1907 Hague Convention[8] stipulates: *"Any dispute between parties regarding the interpretation or execution of the award shall, unless otherwise agreed, be referred to the tribunal that rendered the award."* However, as will be explored in later sections of this article, modern arbitration agreements and laws now typically include clauses addressing the interpretation of arbitral awards.

It should be noted that despite the prevailing recognition of the concept of an interpretative award in various legal systems, its issuance has always been subject to stringent restrictions. To such an extent that, according to some research, no request for the interpretation of an award was accepted in the judicial records of the Iran-United States Claims Tribunal until 1996.[9] The reason for this, as previously mentioned, appears to be the concern over potential abuses. Another reason, however, is that post-award procedures are exceptional in nature and must be applied within the framework of legal principles—principles aimed at reinforcing the finality of issued awards.

1 Iranshahi, Alireza, *Domestic Arbitration Law* (1st edn, Mizan Publication 2023) 264.

2 *National Archives (UK)*, FO 84/505, *Correspondence on Portendic Affair* (1844–1845).

3 De la Pradelle, A and N Politis, *Recueil des arbitrages internationaux*, vol 1 (Noël Texier et Fils 1905).

4 Geneva Protocol on Arbitration Clauses (signed 24 September 1923, entered into force 28 July 1924) 27 LNTS 158.

5 *Geneva Convention on the Execution of Foreign Arbitral Awards* (signed 26 September 1927, entered into force 25 July 1929) 92 LNTS 302.

6 Rubino Sammartano, Mauro, *International Arbitration Law And Practice*, Kluwer Law International, 2nd Ed, 2001, 742.

7 This conference extensively addressed post-award issues. For further reading, see: *International Peace Conference, Deuxième Conférence internationale de la Paix: Actes et Documents* (vol I, Lahaye Imprimerie Nationale) 438.

8 *Hague Convention for the Pacific Settlement of International Disputes* (signed 18 October 1907, entered into force 26 January 1910) 205 CTS 233.

9 Amir Moezzi, Ahmad, *International Arbitration in Commercial Disputes* (3rd edn, Dadgostar Publication 2012) 479; The nature of the IUSCT has sparked considerable debate. For instance, one clause of the constituent agreement subjected damage claims by citizens against either government to arbitration, raising the question of whether this constitutes arbitration absent direct party consent. Some argue: "U.S. nationals always retained the option to sue in third-country courts where Iran held assets…" (Stern, Brigitte, *Un coup d'arrêt à la marginalisation du consentement dans l'arbitrage international*, Rev. arb, 2000, 420). Conversely, the compulsory nature of this mechanism—depriving parties of domestic litigation—has led others to question its classification as arbitration. Regardless of this debate, this article treats the IUSCT as an arbitral body. For an in-depth analysis, see: Ph. Fouchard, *«La Nature Juridique De L'arbitrage Du Tribunal Des Différends Irano-Américains»*Cahiers Du Cedin, 1re Journée D'actualité Internationale, 19 Avril 1984.

The principles of *functus officio*, *res judicata*, and *the finality of arbitral awards* are not aligned with such post-award mechanisms. For this reason, some have argued that while an arbitral tribunal may revisit and reconsider its award, the precise scope of this authority remains unclear and does not easily harmonize with concepts prevalent in most legal systems—whether civil law or common law—such as *res judicata* and *functus officio*.[1]

In further restricting the possibility of issuing interpretative awards, the *Andes Boundary Case*[2] (Queen Elizabeth II's Arbitral Award of 9 December 1966) presents noteworthy observations. The interpreting authority held that interpreting an award should not be equated with interpreting a contract. It maintained that stricter rules must be applied to an award rendered by an arbitrator than to treaties resulting from negotiations between different parties... In the latter case, the interpretive process may involve ascertaining the common intent of the parties, possibly by examining preparatory documents or even subsequent conduct. However, regarding the 1902 award, the authority concluded that determining the arbitrator's intent required no inquiry beyond the three documents constituting the award... The issue was not merely the arbitrator's intent but the failure to realize that intent due to an erroneous assessment of geographical data. As for the subsequent conduct of the parties, including that of private individuals and local authorities, the authority found it difficult to see how such conduct could clarify the arbitrator's intent... .[3]

The subject of this article is an exception to overarching rules and principles that appear to be widely agreed upon—indeed, nearly unanimous—in arbitral jurisprudence. On the one hand, these principles not only limit such post-award mechanisms but also justify their nature and rationale. On the other hand, the very existence of these principles has led to abuses and unwarranted encroachments upon these mechanisms.

2. Defining Criteria and Operational Frameworks for Award Interpretation

2.1. Award Interpretation and its Relationship to Res Judicata

If an arbitral award's validity derived solely from enforcement orders, awards voluntarily complied with would never attain *res judicata* status[4]—a logically untenable conclusion.[5] While Iranian law contains no explicit *res judicata* provision for arbitral proceedings, comparative analysis reveals no substantive distinction between court judgments and arbitral awards regarding this doctrine.[6] Arbitral decisions inherently possess *res judicata* effect, precluding courts from rehearing resolved disputes.[7] Some scholars derive this principle from Articles 488 and 490 of the Civil Procedure Code.[8]

1 Knutson, R. D. A, *The Interpretation Of Arbitral Awards - When Is A Final Award Not Final?*, In Journal Of International Arbitration, Vol. 11,No. 2, 1994, 99.

2 Cordillera of the Andes Boundary Case (Argentina, Chile)

3 Cor, Jean Pierre, *L'affaire De La Frontière Des Andes*, A.F.D.I., 1968, 224-229.

4 …Once a court rules on a matter, it cannot revisit its decision (Article 155, Iranian Civil Procedure Code), though other courts are not bound unless the judgment attains finality. A provisional judgment remains subject to cassation… (Katouzian, Op. Cit., 1989, 17).

5 Katouzian, Nasser, *The Authority of Res Judicata in Civil Claims* (4th edn, 3rd revision, Mizan Publication 1989) 136.

6 Mafi, Homayoun and Hossein Tari, *The Authority of Res Judicata in Arbitral Awards in Iranian and American Law* (2015) 19(4) Comparative Law Research.

7 Glasson, Ernest-Désiré, Albert Tissier and René Morel, *Traité théorique et pratique d'organisation judiciaire, de compétence et de procédure civile* (vol 3, Recueil Sirey 1929) 1840, cited in Katouzian, Op. Cit., 1989, 136.

8 Matin Daftari, Ahmad, *Civil and Commercial Procedure* (vol 1, 1st edn, Majd Scientific and Cultural Association 1999) 428.

Contrarily, certain jurists reject res judicata's application to arbitration. They argue that Article 84(6) only recognizes res judicata for court judgments, while Articles 488, 490, and 492—along with Supreme Court Ruling No. 1089-201 (November 12, 1929)—fail to establish res judicata for arbitration.[1] Addressing concerns about arbitration's utility without res judicata, they contend that resolved disputes leave only the awarded rights enforceable. Thus, presenting the award should compel courts to dismiss re-filed claims.[2]

The former view merits preference because:

1. Re-litigation before the same arbitral body remains possible (e.g., cooperative disputes reheard by arbitration chambers).
2. Articles 488, 490 and 491 of the Civil Procedure Code implicitly recognize res judicata for arbitral awards.
3. Even opposing views ultimately acknowledge award enforceability.[3]

Notably, mutual annulment of awards negates res judicata by eliminating the underlying decision,[4] which doesn't undermine the doctrine's general applicability.

French law prior to reforms lacked consensus on arbitral res judicata. Article 1476[5] of the New Code of Civil Procedure now expressly provides: "The arbitral award possesses res judicata status regarding the dispute it resolves from the moment of issuance."[6]

Iran's Law on International Commercial Arbitration implies this principle through:

- Article 35: "Awards are final and binding upon notification" (absent grounds for nullification).
- Article 32 (discussed subsequently), reflecting *functus officio* as a corollary of *res judicata*.[7]

Thus, res judicata properly applies to arbitration, constraining interpretive awards to genuine clarification without revisiting decided matters.[8] As Baptista notes: "Correction and interpretation may only modify awards without altering their essential character."[9]

Rectifying clerical errors (supplementary/corrective awards) differs fundamentally from revision. The former constitutes a continuation of original proceedings, whereas revision reopens adjudication.[10] Arbitration's defining feature remains award finality without appellate

1 Shams, Abdullah, *Advanced Civil Procedure* (vol 3, 35th edn, Drak Publication 2009) 556-557.

2 Langroudi, Op. Cit., 2020, 196.

3 Mohammadi, Op. Cit., 2024, 222.

4 Karimi, Abbas, *Civil Procedure* (1st edn, Majd Publication 2007) 191.

5 **Article 1476 of the French Code of Civil Procedure** pertains to the determination of the arbitration hearing date. Currently, **Article 1484 of the French CPC** must be considered the provision that articulates the principle of *res judicata* in arbitration. The Article provides: "La sentence arbitrale a, dès qu'elle est rendue, l'autorité de la chose jugée relativement à la contestation qu'elle tranche. Elle peut être assortie de l'exécution provisoire. Elle est notifiée par voie de signification à moins que les parties en conviennent autrement." This provision, as amended in 2011, states in its first paragraph: *"The arbitral award, from the moment it is rendered, has the authority of res judicata with respect to the dispute it resolves."*

6 Shams, Op. Cit., 2009, 558.

7 Iran, *International Commercial Arbitration Law* (1997, as amended 2021), arts 35, 32.

8 Mafi, Homayoun, *A Commentary on Iran's Law on International Commercial Arbitration* (2nd edn, Judicial Science and Administrative Services University Press 2018) 396.

9 Baptista, Op. Cit., 2010, 14.

10 Koohpayeei, Tanaz, Mohsen Mohebi and Saeid Mansouri, *Revisiting International Arbitral Awards in the Realm of Foreign Investment Law* (2022) 21(51) Legal Research Journal, 119; **Revision** broadly encompasses challenges, annulments, and appeals, though only the ICSID

review—a principle with medieval origins.[1] As Lalive observes: "In international law, appeal constitutes an extraordinary exception."[2]

This non-reviewability stems from arbitration's consensual nature. Unlike court judgments, arbitral awards derive authority from party autonomy, making challenges conceptually incongruent.[3] While some tribunals have asserted inherent revision powers,[4] such instances remain exceptional.[5]

These principles yield two key implications:

1. They elevate the importance of proper interpretive awards as losing parties' sole recourse post-res judicata attachment.[6]
2. They preclude using interpretation as a revision substitute—a distinction explored in numerous non-Persian scholarly works.

2.2. Functus Officio and the Exceptional Nature of Interpretation

No Iranian procedural code expressly codifies functus officio, though Article 487 implies it by limiting corrections to the objection period.[7] Article 32 of the Law on International Commercial Arbitration parallels this concept.

Arbitrators generally lose authority upon award issuance, except in narrowly defined circumstances. This flows from:

- Their adjudicative role's inherent limitations
- Party autonomy in arbitrator selection
- The absence of inherent jurisdiction

However, authority persists until award delivery to courts or parties.[8] Significant errors may warrant the issuance of corrective, supplementary or interpretive awards.[9]

Interpretation operates within res judicata's constraints—it is neither an appeal mechanism nor revision pathway. Its exceptional status justifies strict scrutiny to prevent procedural abuse.

2.3. Elements of a Request for Interpretation and the Approach Thereto

The most consistent and clearest practice in this regard can arguably be found in the jurisprudence of the ICJ. As previously noted, interpretation operates within the confines of *res judicata*,

Convention specifically provides for *revision stricto sensu*. Revision entails the original tribunal reassessing its award upon discovering decisive new facts (Iranshahi, Op. Cit., 2023, 73-144). In some institutions (e.g., ICC and Iranian Chamber of Commerce Arbitration Center), arbitrators must submit draft awards for review before signing (Kakavand, Mohammad, *Arbitration Law in the Rulings of Judges and Arbitrators* (vol 2, Dr Mohammad Hossein Shahbazi Legal Studies Institute 2020) 1362–1366).

1 Vekzijl, J.H.W., *International Law In Historical Perspective, Part. Viii: Inter- States Disputes And Their Settlement*, A.W. Sijthoff, Leyden, 1976, 566; Historical precedents include arbitration between Athens and Mytilene (circa 600 BCE). For further reading: Raeder, A., *L'arbitrage International Chez Les Hellènes*, Publications Of The Norwegian Nobel Institute, Kristiania: Aschehoug, 1912.

2 Lalive, Pierre, *Questions Actuelles Concernant L'arbitrage International*, Cours I.H.E.I., 1959-1960, 94-95.

3 Zoller Elisabeth. *Observations Sur La Révision Et L'interprétation Des Sentences Arbitrales*. In: Annuaire Français De Droit International, Volume 24, 1978, 327.

4 Ibid., 334-337

5 Some scholars permit revision absent explicit rules if pivotal facts emerge (Lalive, Op. Cit., 1960, 10).

6 Arbitral awards generally share the effects of court judgments: dispute resolution, establishment of a new legal order, res judicata, and enforceability (Khodabakhshi, Abdullah, *Arbitration Law and Related Claims in Judicial Practice* (9th edn, Sahami Enteshar Publication 2012) 392).

7 Shams, Op. Cit., 2009, 556-557; Mohammadi, Op. Cit., 2024, 222.

8 Khodabakhshi, Op. Cit., 2012, 393-404.

9 Shiravi, Abdolhossein, *International Commercial Arbitration* (2nd edn, SAMT Publication 2012) 272.

distinguishing it from other post-judgment mechanisms—such as requests for *revision*, *appeal*, and the like—which necessitate the re-litigation of issues or engagement with new facts. A request for interpretation must pertain strictly to the *meaning or scope of an existing judgment*, with the objective of clarifying points that have already been *settled*. It is on this basis that the ICJ's jurisprudence has consistently reinforced the principle of *res judicata*.[1]

Two elements must be clearly distinguished in a request for interpretation:

1. **Grounds (Causes of Action):** The legal justifications warranting interpretation, which must demonstrate a genuine ambiguity in a previously adjudicated point, compelling the court to clarify an obscurity in the judgment.
2. **Precise Object (Purpose):** The specific relief sought by the applicant. Crucially, the object may extend beyond mere interpretation to include *correction* or even *revision* of the award. In such cases, the request's admissibility turns not on its ultimate outcome but on the *nature of the grounds invoked*.[2]

This distinction is particularly salient in countering arguments advocating for *revision* based on newly discovered evidence—a point underscored by the ICJ's explicit holding that *interpretation cannot extend to new issues beyond the original judgment's scope or to facts arising post-judgment*.[3]

As succinctly observed by *Professor Abi-Saab* in the *Tunisia/Libya Continental Shelf Case*: *"Returning to the court is never premeditated, as it would undermine the finality of judgments."*[4]

The ICJ, in cases such as *Nigeria v. Cameroon*, has cautioned that requests for interpretation are a *double-edged sword*. They demand meticulous scrutiny, as they risk not only *eroding the judgment's finality* but also *delaying its enforcement*—a point emphasized by *Mr. Lowe's* defense in the *Mexico/US Case*.[5]

In arbitration proceedings, new evidence cannot be introduced through an interpretation request, as such evidence fundamentally lacks grounds for consideration and is typically presented with the intent to alter the outcome. This principle necessitates particular scrutiny of the evidentiary basis prior to submitting an interpretation request, making it imperative for counsel to thoroughly evaluate all supporting materials beforehand... This raises the critical question: may an interpretation request properly rely upon the evidentiary record of the original case?

While some scholars maintain that *res judicata* applies solely to the dispositive portion of the award and not its reasoning, prevailing practice acknowledges that - given the intrinsic connection between a decision's rationale and its operative terms - the evidentiary basis may occasionally require examination when clarifying a judgment's meaning and scope. The Permanent Court

1 Example: Request for interpretation in the *Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea Intervening)* [2002] ICJ Rep 303, pp. 3637-.

2 Zoller, Op. Cit., 1978, 340.

3 *Wena Hotels Ltd v Arab Republic of Egypt* (Decision on Interpretation, ICSID Case No ARB/9831 ,4/ October 2005) para 91.

4 *Case Concerning the Continental Shelf (Tunisia v Libyan Arab Jamahiriya)*, Pleadings, Oral Arguments and Documents, vol V (ICJ 1984) 243 (Abi-Saab).

5 *Case Concerning Avena and Other Mexican Nationals (Mexico v United States of America)*, *Verbatim Record* (31 March 2004) CR 2004,10/ 42–38 (Mr Lowe).

of International Justice (PCIJ), in its interpretation in the *Chorzów Factory* cases,[1] recognized that disputes regarding aspects of the award's reasoning could justify an interpretation request, provided they concern matters definitively decided in the original judgment.

The *Mer d'Iroise* case[2] (as referenced in French jurisprudence) presents instructive lessons in this regard. The dispute revealed a patent contradiction between the award's reasoning - which maintained that the maritime boundary should align with established fishing zones - and its dispositive terms, which established a non-conforming boundary.[3] This discrepancy raised the fundamental question of whether the tribunal's stated intent (as evidenced in the reasoning) should prevail over the technical implementation in the operative provisions (based on expert submissions). While the adjudicating body characterized this inconsistency as a clerical/ calculational error and declined to resolve the theoretical question, the case subsequently generated considerable scholarly debate.

Notably, the Tribunal's approach demonstrated a meticulous distinction between interpretative and corrective functions: interpretation first identified the substantive conflict between reasoning and dispositif, followed by corrective measures to resolve the inconsistency.[4] This methodology yielded several significant conclusions:

1. Interpretation requests in such circumstances may effectively transform into requests for revision, appeal, or correction;
2. The principle of *res judicata* attaches not only to a decision's dispositive terms but equally to its justificatory reasoning.

Under this framework, where the interpretation request's purpose is to clarify a decision's meaning and scope, the arbitrator not only may but must consult the original evidentiary record - particularly when the factual findings constitute an integral component of the decision's definitive aspects.[5]

Under Iranian law, there may be legitimate debate concerning whether the reasoning of an arbitral award can be separated from its *res judicata* effect, particularly where reconsideration of the merits could alter the outcome. However, the alternative view—that the tribunal's reasoning should inform the interpretation of the award—does not inherently conflict with the principle of *res judicata*. In fact, such an approach better reflects the arbitrators' true intent, allowing for a determination of whether the award aligns with the evidentiary record and the tribunal's underlying rationale. Should a discrepancy emerge, the question shifts to whether the matter should be addressed through a corrective award rather than mere interpretation. This approach finds support in broader considerations of fairness, ethical adjudication, and the fundamental objectives of arbitration.

Jurisprudence from international tribunals reinforces these distinctions. The ICJ has consistently held that requests for interpretation under Article 60 of its Statute must pertain

1 *Interpretation of Judgments Nos 7 and 8 (Factory at Chorzów)* PCIJ Rep Series A No 13.
2 *Dispute Concerning the Iroise Sea (France v United Kingdom)*, PCA Case No. 2018-07, Award (31 January 2020).
3 Decision of 14 March 1978, para. 28.
4 Iranian law inadequately distinguishes between interpretative and corrective awards, often conflating them. While correction addresses drafting errors, interpretation may inadvertently modify substance, blurring the line between the two.
5 Zoller, Op. Cit., 1978, 343-350.

strictly to the operative provisions of a judgment, not its reasoning—unless the reasoning is so integral to the dispositive portion that the two cannot be disentangled.[1] This principle has been affirmed in multiple cases, including the *Temple of Preah Vihear*,[2] the *Land and Maritime Boundary* dispute,[3] and the *Avena* case.[4] Similarly, the PCIJ emphasized in the *Chorzów Factory* cases that interpretation may only clarify a decision's meaning and scope where the reasoning constitutes a "condition essential to the Court's decision."

The boundaries of interpretive authority are further defined by general principles of international law. In the *U.K.-French Continental Shelf* arbitration, the tribunal underscored that interpretation is a subsidiary process incapable of altering a binding decision. The *Chorzów Factory* rulings similarly clarified that interpretation serves solely to elucidate, not to supplement, the original judgment.[5] This restrictive view is echoed in the ICJ's 27 November 1950 decision regarding interpretation of its 20 November 1950 *Asylum* case[6]—which remains frequently cited in contemporary litigation—where the Court stressed that the purpose of interpretation is to resolve ambiguities in the dispositive text—not to revisit undecided questions or introduce new reasoning.[7] Moreover, a genuine dispute between the parties regardingthe judgment's meaning is a prerequisite for such intervention.

The second element—concerning the existence of a dispute between parties—finds consistent expression in international jurisprudence. The PCIJ articulated in one of its judgments: *"It is sufficient that the two governments have in fact expressed differing views concerning the meaning or scope of the Court's judgment."*[8]

This principle was further refined in the *Asylum* case,[9] where the ICJ clarified the nature of such disagreement: *"It is evident that a dispute cannot be presumed merely because one party declares the judgment ambiguous while the other maintains its clarity. A genuine dispute requires opposing positions on specific points of interpretation."*[10]

This reasoning is reflected in the Court's observation regarding Colombia's submissions: *"The so-called 'gaps' which the Colombian Government claims to have discovered in the judgment in reality constitute new questions that cannot be resolved through interpretation. Interpretation cannot extend beyond the boundaries already defined by the parties in their original submissions. Indeed, Colombia's questions seek to obtain, through indirect interpretation, rulings on matters the Court was never asked to decide. Moreover, Article 60 of the Statute expressly limits interpretation to cases where a 'dispute as to the meaning or scope of the judgment' exists."*[11]

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1 ICJ Reports [2013] 281.
2 *Case Concerning the Temple of Preah Vihear (Cambodia v Thailand)* [1962] ICJ Rep 6.
3 *Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea Intervening)* [2002] ICJ Rep 303.
4 *Avena* [2004] ICJ Rep 12.
5 Caron, D. D. And L. F. Reed, *Post Award Proceedings Under The Uncitral Arbitration Rules*, In Arbitration International, Vol. 11 No. 4, 1995, 433-434.
6 *Colombian-Peruvian Asylum Case (Colombia v Peru)* [1950] ICJ Rep 266.
7 Ibid., *Verbatim Record* (31 March 2004) CR 200410/, (US counsel).
8 *Interpretation of Judgments Nos 7 and 8 (Factory at Chorzów)* PCIJ Rep Series A No 13, 11.
9 *Asylum Case* [1950] ICJ Rep 266.
10 *Interpretation of Peace Treaties* [1950] ICJ Rep 403, 407.
11 Ibid.

As emphasized by Zoller[1]: *"There must exist between the parties an actual disagreement regarding what was definitively decided in the judgment"*[2]—a standard requiring neither prior diplomatic negotiations[3] nor formal manifestation of the dispute.[4]

This principle was reaffirmed in *Cambodia v. Thailand* (Temple of Preah Vihear),[5] where the ICJ held: *"A dispute under Article 60 of the Statute must be understood as a divergence of views between parties regarding the meaning or scope of the Court's judgment... The disagreement need not have been formally expressed; it suffices that the two states have in fact adopted opposing positions on these questions."* [6]

This jurisprudence aligns with the PCIJ's rulings in *Chorzów Factory Judgments Nos. 7 & 8,* the interpretation request in the *Continental Shelf* case,[7] and the *Avena* interpretation proceedings.[8]

In the application filed on 28 April 2011 by the Kingdom of Cambodia requesting interpretation of the 15 June 1962 Judgment concerning *the Temple of Preah Vihear*, Cambodia invoked Article 60 of the Court's Statute, referring to disputes regarding the scope or meaning of the judgment. By stating its disagreement with Thailand over points contained in the judgment and referencing the map mentioned in the Court's decision, Cambodia sought an interpretative award and legal recognition regarding this temple. Here, the Court first examined whether the parties indeed had a genuine dispute.[9]

The temple, located on the eponymous promontory in the Dangrek mountain range, was recognized as marking the border between the two countries. The request centered on three issues: the meaning and scope of the phrase "vicinity situated in Cambodian territory"; the nature of Thailand's obligation (whether continuing or instantaneous); and the binding character of the map annexed to the judgment. The Court, referring to Article 60 (which permits interpretative awards when disputes arise concerning an award's meaning or scope) and Article 98 of the Rules of Court (its complementary provision), allowed either party to request an interpretative award, provided they specified the points of disagreement.

Article 50 of the ICSID Convention similarly requires that an interpretative award be predicated on a dispute between the parties regarding the interpretation of a specific provision, meaning general complaints about the judgment's clarity are insufficient. The existence of a dispute also requires a particular degree of engagement between the parties, such that they have genuinely demonstrated opposing views on specific points concerning the judgment's meaning orscope.[10]

This requirement (the existence of a dispute as a precondition for an interpretative award) has

1 Zoller, Op. Cit., 1978, 343-344.
2 PCIJ, Series A, No. 13, p. 11.
3 Ibid., 10.
4 Ibid., 11.
5 ICJ Reports 2013, p. 281.
6 *Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v Thailand)* [2013] ICJ Rep 281.
7 *Tunisia v Libya* [1982] ICJ Rep 18.
8 *Avena* [2004] ICJ Rep 12.
9 Case Concerning Temple of Preah Vihear (Interpretation) [2013] ICJ Rep 281., ICJ Doc No 2012/36 (29 November 2012).
10 Schreuer, Christoph H., Loretta Malintoppi, August Reinisch, Anthony Sinclair, *The Icsid Convention: A Commentary*, Cambridge University Press, 2019, 868; *Wena Hotels v Egypt* (Interpretation Decision) para 81

not been as rigorously observed in other forums. In domestic jurisdictions, a unilateral claim of ambiguity appears sufficient to warrant an interpretative award, by analogy to expert appraisal procedures (though these are distinct processes and the analogy is imperfect). Similarly, at the Iran-United States Claims Tribunal, cases involving interpretation requests show that this requirement has not been strictly applied.

Caron and Reed have proposed a practical test for determining when an interpretation request is admissible. Although formulated in the context of UNCITRAL rules, it may equally apply to other similar frameworks, as reflected in Article 35 of the UNCITRAL Arbitration Rules: "If specific language or punctuation in the award is unclear - meaning either incomprehensible or susceptible to contradictory interpretations -... a clarification request under Article 35 would be justified. Under Article 35, the requesting party must be able to quote the ambiguous passage in the award and define the uncertainty. Genuine ambiguity sets a high threshold, and certainly warrants giving the arbitral tribunal another opportunity to clarify its intent. This applies particularly when the award leaves uncertainty regarding 'the award's purpose and the resulting rights and obligations of the parties'."[1]

The logical conclusion would be to recognize that the issuing tribunal, having formulated the award, possesses complete understanding of its intent. Thus, ambiguities perceived by the parties would not normally exist in the arbitrators' minds. Consequently, reason dictates that any alleged ambiguity must be specifically quoted and defined. This requirement serves not merely as a test of the applicant's good faith, but as a necessary logical precondition for addressing the substantive request.

3. Legal Foundations for Interpretive Awards

The first step in addressing the interpretation of an arbitral award is to examine whether the parties' agreement or arbitration contract provides for such interpretation.[2] The scope of party autonomy in arbitration far exceeds that in judicial proceedings; parties may even grant the arbitral tribunal absolute authority to issue interpretive awards without requiring a formal request. As some scholars have noted, one of the guiding principles of arbitration is the parties' right to establish its procedural rules.[3]

From this, it follows that parties may not only provide for interpretive awards in their agreements but may also define their scope—whether expansively or restrictively. However, in the absence of explicit provisions, recourse must be made to the governing laws and principles of the contract. Below, some of these legal frameworks are examined.

3.1. Under Iranian (Domestic) Arbitration Law

Although various legal systems contain explicit provisions concerning the interpretation of arbitral awards, Iranian domestic arbitration law lacks such statutory text,[4] giving rise to doctrinal disputes.

1 Caron & Reed, Op. Cit., 1995, 433-434
2 Iranshahi, Op. Cit., 2023, 264.
3 Knutson, Op. Cit., 1994, 103.
4 Some legal systems and their respectives laws, like the U.S. Federal Arbitration Act (FAA), lack provisions on award interpretation (Lal et. al., Op. Cit., 2021, 17).

Certain scholars[1] observe that the Iranian Code of Civil Procedure contains no express provisions regarding the interpretation of arbitral awards. Article 488 of the Code[2] stipulates that awards shall be enforced in accordance with legal provisions, while Article 27 of the Civil Judgment Enforcement Act[3] implicitly recognizes the legitimacy—and even necessity—of resolving ambiguities in awards or their operative terms, designating the issuing court as the competent authority. By analogy, these provisions may be extended to justify the interpretation of arbitral awards and the clarification of ambiguities therein.[4] Furthermore, reference may be made to the principles enshrined in the Law on International Commercial Arbitration, particularly its Article 32, which permits arbitrators—either upon party request or *sua sponte*—to clarify ambiguities in awards... Where ambiguities or circumstances render an award incapable of clarification or enforcement, and where the parties' legal relations consequently reach an *impasse*, the award shall be deemed *null and void*, necessitating the application of rules governing invalid arbitral awards.

Given this statutory silence, some commentators[5] have deemed it permissible to apply Article 32 of the 1997 Law on International Commercial Arbitration by analogy.

Certain others[6] contend that the Civil Judgment Enforcement Act provides mechanisms for resolving ambiguities in judgments or their execution, most of which apply equally to arbitral awards. A recurring practical challenge arises in cases involving damages, where arbitrators may: (i) issue an award without specifying damages; (ii) employ ambiguous criteria; or (iii) determine only partial damages while deferring the remainder to expert assessment. In such instances, the award should not be automatically invalidated. Pursuant to the principle *"mā lā yudraku kulluhu lā yutraku kulluhu"* (what cannot be wholly attained must not be wholly abandoned), the enforceable portions (*qadr al-mutayaqqan*) of the award must be given effect, with only the ambiguous provisions deemed unenforceable.[7]

Although the aforementioned author does not explicitly articulate the practical difficulties in question, and notwithstanding the existing disputes particularly concerning the competent authority for resolving ambiguities in arbitral awards which may create complications, it appears necessary to adopt a differentiated approach regarding the aforementioned scenarios rather than subsuming them entirely under the category of ambiguity resolution. The proper approach would be as follows: where the issue concerns a portion of the claim that remains unexamined and thus undetermined or has been referred to expert assessment, in such cases a request for a supplementary award should be considered, although a request for clarification may serve as a preliminary step;[8] where the claim has been examined but the issued award contains erroneous criteria causing ambiguity, which may constitute grounds for award correction; or where the

1 Iranshahi, Op. Cit., 2023, 226.

2 **Iranian Civil Procedure Code, Article 488**: "Should the award debtor fail to comply within 20 days of notification, the referring court (or the court with original jurisdiction) must issue an enforcement order upon the creditor's request."

3 **Civil Judgment Enforcement Act, Article 27**: "Disputes over award interpretation or enforcement ambiguities are adjudicated by the issuing court."

4 For divergent views on competent authorities, see: Mirshekari, Abbas and Mohammad Kazem Mahtabpour, *The Competent Authority for Interpreting Arbitral Awards* (2020) 50(3) Private Law Studies Quarterly, 591–607.

5 Mohajeri, Ali, *A Comprehensive Treatise on Civil Procedure* (vol 4, 1st edn, Fekrsazan Publication 2007) 344.

6 Khodabakhshi, Op. Cit., 2012, 610.

7 Ibid., 610-615.

8 See *the Iroise Sea case* analysis in this article.

text is free from drafting errors and the matter was addressed during proceedings yet remains ambiguous, in which case there should be no impediment to clarification.

Regarding awards issued in overly general terms, it may be stated that either this ambiguity resembles the previous case where the matter was examined and adjudicated, or it does not, in which case depending on the circumstances it may lead to the issuance of an interpretative award, or if resulting from incorrect terminology, a corrective award may be issued, or where possible a supplementary award may be rendered, and if none of these are feasible then other measures must be pursued.

In practice however, a tendency towards annulment of ambiguous awards is observed, as evidenced by numerous rulings. For instance, in Judgment No. 9209970221500679 dated 29 August 2013, while the court of first instance rejected the annulment request for failing to satisfy the conditions enumerated in Article 489 of the Code of Civil Procedure, Branch 15 of the Tehran Court of Appeal held that the issued award was general and ambiguous to the extent of admitting multiple interpretations and failing to resolve the dispute, consequently ordering its annulment.[1] Similarly, reference may be made to Judgment No. 83.4.7-445 issued by Branch 29 of the Tehran Court of Appeal[2] and Judgment No. 8909970228700519 dated 3 October 2010.

As noted by some commentators,[3] Article 9 of the 2022 Arbitration Fees Bylaw provides contrary implicit confirmation of the aforementioned practice, stipulating that "clarification of an arbitral award or its correction shall not require payment of fees," from which the permissibility of arbitrators clarifying awards may be inferred. Although the said bylaw does not specify the procedure for resolving ambiguities, given that arbitrators act as adjudicators appointed by the parties, the appropriate procedure may be derived from Articles 27 and 29 of the Civil Judgment Enforcement Act.[4]

On the other hand, the text of Article 28 of the Civil Judgment Enforcement Act has also generated disputes. In accordance with Article 3 of this law, "a judgment with unspecified subject matter is unenforceable." Article 27 further provides that "disputes concerning the content of judgments as well as disputes arising from the execution of judgments resulting from ambiguity or vagueness in the judgment or its operative part shall be examined by the court that issued the judgment." In this context, Article 28 states that "an arbitral award with unspecified subject matter is unenforceable. The competent authority for resolving disputes arising from the execution of arbitral awards is the court that issued the writ of execution."

As evident, the wording of Article 28 of the Civil Judgment Enforcement Act may admit various interpretations[5] that could potentially align with the aforementioned judicial practice, thus necessitating legislative amendment. It should be noted that ambiguity may arise not only from the subject matter of the judgment but also from other crucial elements of the award that produce similar effects, such as when defendants are held liable in general terms without

1 Judicial Administration of Tehran Province, 2023, 448-449.

2 Judicial Administration of Tehran Province, 2023, 653-655.

3 Mohammadi, Op. Cit., 2024, 220.

4 **Civil Judgment Enforcement Act, Article 29**: "Either party may petition the court to resolve interpretive disputes. The court shall hear the matter expediently, with or without the counterparty's presence."

5 This inconsistency appears not only among scholars but also within individual works—some initially discuss ambiguity resolution yet later cite indeterminacy as a ground for annulment. Notably, ambiguity arising from a claimant's pleadings (distinct from arbitral ambiguity) is beyond this article's scope (Mousavi, Op. Cit., 2024, 43–45).

specifying the nature of their liability (joint or several).[1] Furthermore, the indeterminacy of the judgment's subject matter constitutes a substantive defect in the judgment itself rather than a mere enforcement issue.[2] These two aspects demonstrate the insufficiency of the said provision and highlight the legislative silence regarding ambiguity in arbitral awards.

Nevertheless, this article plays a significant role in interpretation. Some commentators,[3] after analyzing the concept of indeterminate subject matter, have utilized Article 28 to conclude: "The indeterminacy of a judgment's subject matter may manifest in two forms... In some cases, the operative part may lack clarity or completeness, such as when the judgment omits specific delivery terms or fails to fully describe the characteristics of an electrical generator... In other cases... the judgment may alternate between two or more alternatives, such as ordering the defendant to either deliver a specified electrical generator or pay one hundred billion rials... The question arises as to which authority holds jurisdiction to determine the subject matter of an ambiguous domestic arbitral award. In response, it must be acknowledged that... given the general wording of Article 28, the competent authority for resolving execution disputes lies with the court, even when such disputes stem from ambiguity in the award or its operative part."[4]

Other scholars[5] have distinguished between court judgments and arbitral awards with indeterminate subject matter: "A court judgment with this defect is fundamentally unenforceable and cannot be clarified or enforced, whereas for arbitral awards, considering the legislature's approach in Article 28 regarding dispute resolution and the absence of indeterminate subject matter from the annulment grounds under Article 489 of the Code of Civil Procedure, such defect does not render the award void or unenforceable. Rather, the issuing arbitral tribunal must clarify the ambiguity."

However, consistent with some views,[6] it should be noted that Article 28 primarily concerns disputes arising during enforcement. This interpretation finds support in Article 27 of the same law, which distinguishes between disputes over a judgment's content and those concerning its execution. The legislative intent appears to maintain this distinction, requiring different approaches for each scenario.

The judicial assembly held on January 16, 2020 concerning the clarification of arbitral awards addressed a case where an arbitral tribunal had issued an award ordering the respondent to deliver "the price of a 4×3 Chaleshtori brick-woven carpet," and after the award became final without objection, the case was referred for enforcement, at which point a dispute arose between the parties regarding whether the "price" referred to a new carpet or one with twenty years of use, prompting the enforcement court to request clarification from the arbitral tribunal,

1 Mousavi, Op. Cit., 2024, 270.
2 Ibid., 271.
3 Shams, Abdullah, *Enforcement of Civil Judgments* (vol 1, 1st edn, Drak Publication 2018) 552-559, 925.
4 The subject matter of a judicial ruling has been defined by some as an act, an omission, or a claim sought by the plaintiff, with a distinction being drawn between the subject matter of the ruling and the adjudicated obligation. The subject matter of the ruling constitutes the plaintiff's claim and the objective pursued through litigation, whereas the adjudicated obligation refers to the outcome or measure imposed upon the defendant by virtue of the court's judgment. There exists a close nexus between these two concepts. If the court issues a ruling in overly broad or general terms, such a judgment lacks enforceability. However, not all instances of ambiguity can be remedied through corrective judgments or similar mechanisms—particularly where the plaintiff's initial claim was not articulated with sufficient precision and finality, meaning the ambiguity stems from the plaintiff's own error... (Mousavi, Op. Cit., 2024, 43-45). As mentioned at the outset of this article, errors attributable to the plaintiff fall outside the scope of the present discussion.
5 Mousavi, Seyed Abbas, *Enforcement of Civil Judgments* (vol 1, 2nd edn, Dadgostar Publication 2016) 195.
6 Mohajeri, Op. Cit., 2007, 308.

raising two key legal questions: first, whether such clarification is legally permissible and which authority bears responsibility for clarifying arbitral awards, and second, whether the arbitrator may issue a corrective award in this case

The High Council's majority opinion, drawing upon the general principles of Article 27 of the Civil Judgment Enforcement Act, Article 32 of the Law on International Commercial Arbitration, the analogous application of Article 28 of the Civil Judgment Enforcement Act, and Advisory Opinion No 928/93/7 dated July 12, 2014 from the Judicial Administration's Legal Department, determined that authority to clarify the award rests with the original arbitral tribunal, while noting that corrective awards remain subject to the conditions stipulated in Article 487 of the Code of Civil Procedure which references Article 309, and that disputes arising during enforcement fall within the executing court's jurisdiction under Article 28.

A minority dissenting opinion interpreted Article 28 as vesting clarification authority in the enforcement court, while the majority rationale emphasized that since the specific query concerned award clarification rather than correction, the matter properly fell under Article 27 of the Civil Judgment Enforcement Act, Article 32 of the Law on International Commercial Arbitration, and Advisory Opinion No 7/2031 dated June 19, 2011, all of which confirm the arbitral tribunal's exclusive clarification competence, with the observation that this particular case fell outside Article 487's corrective award provisions as it involved neither calculation errors nor obvious textual mistakes under Article 309.

A supplementary view further noted that under Article 28, awards with indeterminate subject matter are inherently unenforceable, which would render the clarification request moot in this instance, highlighting the ongoing jurisprudential tension between preserving arbitral finality and ensuring enforceability through proper clarification mechanisms, particularly in cases where the award's ambiguity stems not from drafting errors but from substantive indeterminacy in the tribunal's original decision

3.2. Law on International Commercial Arbitration

The International Commercial Arbitration Law, enacted by the Iranian parliament in 1997, serves as a foundational framework for establishing a regional arbitration center in Iran, with the primary objective of resolving disputes arising from international commercial relations.[1] This law substantially aligns with the UNCITRAL Model Law on International Commercial Arbitration, though certain provisions deviate from the Model Law to accommodate domestic legal conditions.[2] The differences between this law and the UNCITRAL provisions are primarily procedural in nature.[3]

Regarding the interpretation of arbitral awards, the law provides that where an issued award is ambiguous, the arbitral tribunal retains the authority to clarify or interpret it. Such interpretation may be undertaken either *sua sponte* by the tribunal or upon request by either party. In the latter case, the request must be formally submitted to the tribunal, which may grant the clarification if deemed justified.[4]

1 Tamjidi, Ladan, *International Arbitration* (1st edn, Farhang-Shenasi Publication 2011) 58.
2 Seifi, Seyed Jamal (tr Parvin Mohammadi Dinani), 'Iran's Law on International Commercial Arbitration in Harmony with the UNCITRAL Model Law' (1998) 23 *International Law Journal*, 36.
3 Tamjidi, Op. Cit., 2011, 58.
4 Shiravi, Op. Cit., 2012, 276.

Article 32(1) of the Law on International Commercial Arbitration explicitly states: *"The arbitrator may, either upon request by either party or on their own initiative, correct any computational, clerical, or similar errors in the award or clarify any ambiguities therein."*

Article 32(2) further stipulates: *"A party's request for correction or clarification must be submitted within thirty days of the award's notification, with a copy served to the opposing party. The arbitrator shall render the correction or clarification within thirty days of receiving the request or, in cases of sua sponte action, within thirty days of the award's issuance."*

3.3. Interpretive Awards in Other Legal Frameworks

The UNCITRAL Arbitration Rules (1976) contain explicit provisions regarding award interpretation. Article 35 stipulates: *(a) Within thirty days of receiving the award, either party may request the arbitral tribunal to interpret the award, with notice to the other party; (b) The interpretation shall be issued in writing within forty-five days of the request and shall form part of the award, with Articles 32(2)-(7) applying accordingly.*

However, the UNCITRAL Model Law (1985, as amended in 2006) adopts a distinct approach, permitting interpretive awards only by party agreement. Article 33(b) states: *"If agreed by the parties, either may request the arbitral tribunal to interpret a specific point or part of the award by notifying the other party."*

Later instruments—including the 2010 UNCITRAL Arbitration Rules and the 2013 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration—further address interpretation. Notably, the 1976 UNCITRAL Rules governed the Iran-US Claims Tribunal, rendering subsequent UNCITRAL amendments inapplicable to that framework.

The ICSID Convention similarly provides post-award mechanisms akin to other arbitral regimes. Parties may request *supplementation or correction* (Article 49), *interpretation* (Article 50), *revision* (Article 51) or *annulment* (Article 52).

Under Article 50, interpretation requires a dispute about the award's *meaning or scope*, but only original parties to the proceeding may file such requests.[1] The application must precisely identify the contested points,[2] as tribunals lack *sua sponte* authority to interpret awards.

Comparative provisions exist in *AAA International Arbitration Rules*,[3] *Oman-Arab States Commercial Arbitration Convention*,[4] *UK Arbitration Act*[5] and *French Code of Civil Procedure*.[6]

These frameworks collectively demonstrate a balance between finality and clarity, with variations in procedural thresholds for interpretation requests.

4. IUSCT Practice Regarding Interpretive Awards

As noted above, requests for interpretation before the Iran-United States Claims Tribunal have consistently been unsuccessful. This section examines these requests in light of the established criteria to scrutinize the reasons for their failure.

1 Schreuer, Op. Cit., 2019, 868; See also *Wena Hotels v Egypt* (Interpretation Decision) para. 81.
2 Lal et. al., Op. Cit., 2021, 9.
3 *American Arbitration Association (AAA) International Arbitration Rules* (2020 Revision) art 30.
4 *Oman-Arab States Commercial Arbitration Convention* (1987) art 33.
5 *Arbitration Act 1996* (UK), s 57(a)-(b); For recent amendments, visit: https://www.legifrance.gouv.fr
6 *Code de procédure civile* (France) art 1485.

The first case clearly demonstrates that a request for reconsideration should not be disguised as a request for interpretation, nor should it be motivated by an attempt to reargue the case under the pretext of altering the award.

In the *Gabay v. Iran* case,[1] on August 12, 1991, the claimant submitted a request for interpretation of Award No. 515-771-2 to the Tribunal. In the said award, the Tribunal had found that it could not establish that the respondent had expropriated the claimant's property by the date of the Algiers Accords (January 19, 1981) and consequently dismissed the claim for lack of jurisdiction. Although the claimant asserted that his request sought only an interpretation of the award and explicitly stated that he did not intend to reopen the proceedings, his submissions in fact contested the Tribunal's reasoning, arguing that the evidence warranted a different conclusion than the one reached in the award. The Tribunal thus stated that it was unable to discern the precise nature of the claimant's request, given that, post-issuance, an award may only be subject to interpretation, correction, or supplementation. The Tribunal held that the request, insofar as it sought to reargue aspects of the case, request a revision of the award, or demand further elaboration on the Tribunal's reasoning, lacked any basis in the Tribunal's rules or other applicable sources. Consequently, the Tribunal unanimously rejected the request for interpretation.

In another case, the dispute arose when the respondent in *Eastman Kodak v Iran*, challenged the award.[2] Iran argued that the Tribunal had: (1) failed to adhere to its own findings in the partial award, (2) erroneously cited portions of the partial award in the final award, and (3) rendered inconsistent conclusions between the partial and final awards. In support of its challenge, Iran attached an expert opinion by Brigitte Stern, contending that these inconsistencies invalidated the award. Professor Stern's opinion asserted that the final award conflicted with the jurisprudence of the ICJ in the *ELSI* case, as well as with international principles governing compensation for *lucrum cessans*. She further argued that the Tribunal's partial and final awards were internally contradictory.

The request appears unusual! Consequently, the Tribunal states that it does not fully comprehend the respondent's objective in this application. Iran failed to specify under which provision of the Tribunal's Rules its request was submitted, even though it alluded to the necessity of interpreting the final award. At the same time, however, Iran argued that the Tribunal's findings in the partial award and the case record warranted a different conclusion than the one reached in the final award. The Tribunal thus determined that this request clearly did not fall under *Article 37* of its Rules and accordingly dismissed it.

It is evident that while this request ostensibly sought clarification of an alleged ambiguity, its underlying arguments effectively amounted to a demand for revision or reconsideration. As previously discussed, the correction or interpretation of an arbitral award is permissible only where there is no intent to alter the substance of the decision. This case exemplifies the principle that a request for interpretation must not serve as a vehicle for substantive review. Iran's submission—supported by *Brigitte Stern's opinion*—focused on contesting the award's outcome rather than demonstrating any genuine ambiguity.

Among the cases examined, there are additional instances where the IUSCT explicitly

1 *Norman Gabay (Nourollah Armanfar) v Islamic Republic of Iran*, IUSCT Case No 812-812-3, Award No 603-812-3 (22 January 1998).
2 *Eastman Kodak Company v Islamic Republic of Iran*, IUSCT Case No 514-227-3, Award No 329-227-3 (11 November 1987).

emphasized that, given the *finality of arbitral awards*, parties must not use interpretation requests as a means to seek reconsideration.

In the *Ford Aerospace v Iran & CBI* case,[1] on February 16, 1987, the Agent of the Islamic Republic of Iran submitted two requests: one for *correction and interpretation* and another for an *additional award* regarding *Partial Award No. 289-93-1* (dated January 29, 1987). The first request pertained to a counterclaim concerning equipment supplied by the buyer (Watkins-Johnson) on behalf of Iran (paras. 101–105 of the Award). Iran requested that the Tribunal *correct and interpret* the award by including detailed explanations of arguments raised by the opposing party but omitted from the award, as well as the Tribunal's reasons for rejecting the counterclaim before addressing Case No. 370.

The Tribunal responded by stating that *to the extent the request sought to reargue aspects of the case or challenge the Tribunal's conclusions, no basis existed in its Rules or elsewhere for revising the award.* Regarding interpretation, the Tribunal reiterated that *Article 35(1) of the UNCITRAL Rules* applies only where the award contains *genuinely ambiguous language*. The *Fibrecorp v Iran and others* case[2] provides another example of a failed interpretation request. In response to Iran's submission, the Tribunal held that the request merely *rehashed arguments already presented* during the proceedings. The Tribunal deemed it an *impermissible attempt to reopen a settled issue* on which Iran disagreed with the Tribunal's conclusions. Consequently, the request was rejected.

Following the issuance of the award in *PepsiCo v. Iran and others*,[3] Iran's Agent filed a request for interpretation within the 30-day deadline under Article 30 of the Tribunal's Rules, seeking clarification of Award No. 260-18-1 (October 13, 1986). Iran argued that the reasoning in the award contained ambiguities requiring resolution under Article 35 of the UNCITRAL Rules (while also requesting supplementary and corrective awards).

In its brief, Iran contended that: 1) The Tribunal's rejection of respondents' request for an expert valuation of Zamzam's shares was contrary to equity, fairness, and general principles of international law; 2) The award's treatment of the claimant's right to enforce promissory notes under Clauses 3(c) and 4 of the main contract was ambiguous; 3) The ruling on the governing law of the loan agreements was unjustified; and 4) The Tribunal's discretion in setting interest rates for each loan was incorrectly applied.

The Tribunal, however, dismissed the request, finding that Iran's arguments did not identify any true ambiguity but instead sought to re-litigate issues already decided.

The Tribunal held that the drafting history of Article 35(1) of the UNCITRAL Rules demonstrates that the phrase "interpretation of the award" was intended to mean "clarification of the award," as evidenced in the Summary of Discussion on Preliminary Draft from the 8th Session.[4] Accordingly, the purpose of Article 35(1) was understood to permit either party to

1 *Ford Aerospace & Communications Corp v Islamic Republic of Iran and Central Bank of Iran*, IUSCT Case No 289-93-1, Award No 280-93-1 (15 March 1986).

2 Phibro Corporation v. Ministry of War-Etka Co. Ltd., Government Trading Corporation and The Government of the Islamic Republic of Iran, IUSCT Case No. 474.

3 PepsiCo, Inc. v. The Government of the Islamic Republic of Iran, Foundation for the Oppressed, Zamzam Bottling Company and others, IUSCT Case No. 18.

4 *Summary of Discussion on Preliminary Draft from the 8th Session* (1975) UN Doc A/10017, paras 201, 206.

seek clarification of an award containing ambiguous language, thereby ensuring the award's complete freedom from uncertainty.

The Tribunal further observed that none of the four arguments presented in the Respondents' submission exhibited any ambiguity. The award's text was clear in rejecting the Respondents' request for the appointment of an expert to evaluate the share valuation of Zamzam and Dey companies, including the grounds for such rejection. The award also left no ambiguity in affirming the Claimant's right to demand immediate payment of the promissory note under the governing conditions, expressly citing the relevant provisions of Clauses 3(c) and 4 of the underlying contract, which confirmed this entitlement. Additionally, the award explicitly designated New York law as the governing law of the loan agreement and precisely determined the interest payable for each loan, detailing the factors the Tribunal considered in its calculation.

Since the award contained no provisions requiring interpretation under Article 35(1) of the Tribunal's Rules, the request for interpretation was denied in the decision dated 11 December 1986.

It appears that, in addition to the points addressed in the award, the Iranian Agent has overlooked certain other considerations. By invoking the concept of justice, they are quite explicitly seeking a new outcome and a substantive revision—a position they have even articulated outright!

In the *SEDCO v NIOC & Iran* case,[1] the Iranian respondents submitted three distinct requests: (1) for interpretation, (2) correction, and (3) supplementation of the award. The Tribunal ultimately dismissed these requests, holding that no ambiguous language could be identified in the award, nor had the respondents (NIOC and Iran) pointed to any specific ambiguities requiring clarification. Consequently, the Tribunal found no grounds for interpretation.

The Tribunal further observed that the respondents should have directly identified and explained any alleged ambiguities—a procedural expectation they failed to meet. This case reveals a recurrence of Iran's prior misunderstandings regarding the limited purpose of interpretive awards. The Iranian party's submissions alleged that the Tribunal had committed substantive and procedural errors in its decision and insisted on a revision of the award. However, as emphasized in Paragraph 6 of the award, the Tribunal lacks jurisdiction to entertain requests that effectively function as appeals or substantive reviews of its decisions.

This position is consistent with established precedents, including Paragraph 4 of Decision No. 57-498-1 (*Dominguez v. Iran*),[2] Paragraph 5 of Decision No. 58-48-3 (*American Bell v. Iran*),[3] and Paragraph 4 of Decision No. 59-93-1 (*Ford Aerospace v. Iran*),[4] all of which confirm that the Tribunal's mandate does not extend to *de novo* reconsideration of its rulings.

Given this clear jurisdictional limitation, it is striking—if not perplexing—that the Iranian respondents pursued an inadmissible remedy through an improper procedural avenue. This approach finds no support in the legal principles discussed in this article and underscores a fundamental misalignment with the Tribunal's procedural framework.

In the *Fibrecorp v Iran and others* case, the respondents filed requests for interpretation

1 Sedco, Inc. v. National Iranian Oil Company and The Islamic Republic of Iran, IUSCT Case Nos. 128 and 129.
2 *Dominguez v Islamic Republic of Iran*, IUSCT Case No 368-10537-2, Award No 586-10537-2 (15 April 1997).
3 *American Bell International Inc v Islamic Republic of Iran*, IUSCT Case No 48-48-3, Award No 255-48-3 (19 September 1986).
4 *Ford Aerospace & Communications Corp v Islamic Republic of Iran*, IUSCT Case No 289-93-1, Award No 280-93-1 (15 March 1986).

and supplementation of Award No. 503-474-3. The Tribunal explicitly noted in its decision that "Iran failed to identify any ambiguous language in the award. Moreover, its request merely reiterated arguments previously presented before the Tribunal. As such, the request constituted an impermissible attempt to re-litigate an aspect of the award with which Iran disagreed..."

This ruling, issued approximately *four years after the previously referenced decision (1991)*, demonstrates a recurring pattern of procedural missteps by Iranian parties and their failure to learn from past errors. Even if the Iranian side had sought to exploit the mechanism of interpretive awards, it should have, at a minimum, framed its request in a manner that could plausibly resemble a legitimate request for interpretation. Instead, the submissions were so fundamentally misaligned with the Tribunal's procedural requirements that they could not even be mistaken for a bona fide interpretive request.

The jurisprudence of the IUSCT establishes that a party seeking interpretation of an award must not only identify the disputed provision but must also substantively demonstrate its alleged ambiguity. This principle was clearly articulated in the *Donin de Rosière v Iran* case[1] concerning Interim Order No. 641-498-, where Iran's request for interpretation was rejected despite its arguments regarding textual ambiguity.

The Tribunal emphasized that Article 35(1) of its Rules, which mirrors the UNCITRAL Arbitration Rules, permits interpretation only when the award's language is genuinely ambiguous. This provision requires the requesting party to specifically identify the ambiguous text and demonstrate how such ambiguity affects implementation. In this case, Iran contended that the term "status quo" in Paragraph 17 of the Interim Order was ambiguous, particularly in relation to compensation issues. However, the Tribunal found this argument unpersuasive, holding that the term was used precisely in its ordinary meaning and that Iran failed to show how alternative interpretations were plausible.

The decision reaffirms the Tribunal's consistent position that interpretation cannot serve as a mechanism to challenge substantive findings (*res judicata*) or reargue the case under the guise of clarification. It further establishes that alleged contextual ambiguity does not create interpretive jurisdiction if the disputed term itself is unambiguous. This case exemplifies recurring issues in Iran's approach, including the conflation of disagreement with ambiguity and the failure to articulate how the purported ambiguity impedes compliance.

For practitioners, this ruling underscores the necessity of precision in drafting interpretation requests. Successful applications must isolate specific ambiguous phrases and demonstrate how the ambiguity creates operational uncertainty, rather than merely expressing dissatisfaction with the Tribunal's substantive conclusions. The Tribunal's strict construction of Article 35 contrasts with some more flexible approaches in other arbitral forums, highlighting its emphasis on textual precision over contextual arguments. Ultimately, this case illustrates that the Tribunal views interpretation as an exceptional remedy for genuine textual uncertainty, not a tool for revisiting unfavorable decisions, and parties must tailor their requests accordingly to avoid summary dismissal.

There exists precedent in the Tribunal's jurisprudence wherein arbitrators have deemed

1 *Paul Donin de Rosière and Panacaviar SA v Islamic Republic of Iran and Iran Fisheries Company*, IUSCT Case No 498-375-1, Award No 327-498-1 (3 August 1987).

certain requests as attempts to obtain relief *beyond the scope of the original claim*—a practice that must undoubtedly be opposed. For instance, in *Decision No. 1-381-75*, the Tribunal found that the claimant's request did not fall within the framework of *Article 35* (Interpretation of the Award), stating:

> *"The Claimants*[1] *further 'request that it be clarified that the amount awarded under paragraph 98 of the Award, which has been set aside, shall be deposited in a security account with a third-party authority...' As previously discussed, Article 35 permits the interpretation of an award only in cases of genuine ambiguity. No request for 'deposit into a security account with a third-party authority' was made during the proceedings, and thus, the Award did not address this issue. The Tribunal is of the view that, under the present circumstances, this request does not fall within the scope of Article 35 of the Tribunal's Rules." (Paragraph 6 of the Decision).*

Similarly, *Decision No. 74-366-3* arose from a request for interpretation. The Respondents[2] argued that the Award required clarification "because it did not specify whether the parties' relationship constituted a sale-purchase agreement or a commission-distributor arrangement..." The Tribunal rejected this argument, referencing the contract year and *Paragraph 25 of the Award*, which detailed the relevant purchase orders.

In another case (*Case Nos. A-15 (II:A), A-26 (IV), and B-43*), where the *Islamic Republic of Iran* was the Claimant and the *United States of America* the Respondent, the U.S. contended that the parties needed to ascertain whether any *pre-award interest calculation errors* had occurred, requiring further details on the Tribunal's methodology. The U.S. initially filed a request under *Article 36* (Correction of the Award) and, alternatively, under *Article 35* (Interpretation). The Tribunal held:

The method and basis for calculating pre-award interest on the awarded amounts fall within the Tribunal's discretionary authority, as comprehensively explained in the Partial Award. "The United States' present request for additional information regarding the Tribunal's calculation of pre-award interest clearly does not pertain to the correction of such errors and is, therefore, outside the scope of Article 36. Accordingly, the request must be denied." (Paragraph 13).

Regarding the alternative request under *Article 35*, the Tribunal further ruled:

> *"The language of the Partial Award leaves no ambiguity as to the method and basis for calculating pre-award interest that would justify an interpretation under this provision. The Partial Award has already elaborated, with sufficient precision and detail, the Tribunal's approach to this calculation." (Paragraph 14).*

Nevertheless, the Tribunal expressed willingness to provide the underlying computational data as a matter of procedural transparency.

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1 *Uiterwyk Corporation, Jan C Uiterwyk, Maria Uiterwyk, Robert Uiterwyk, Hendrik Uiterwyk and Jan D Uiterwyk v Government of the Islamic Republic of Iran, Ministry of Roads and Transportation, Ports and Shipping Organization, Iran Express Lines and Sea-Man-Pak*, IUSCT Case No 381-158-1, Award No 375-381-1 (6 July 1988).

2 *Endo Laboratories, Inc v Islamic Republic of Iran, Trasspharm Trading Company, Iran Wallace Company, Darou Pakhsh and Bonyade Mostazafan*, IUSCT Case No 366-10536-2, Award No 585-10536-2 (15 April 1997).

Conclusion

An interpretative award serves to resolve ambiguities in issued arbitral awards and must not result in an alteration of their substance. It should not conflict with the principle of *res judicata*, which is regarded as sacrosanct in international arbitration and, in our view, ought to be similarly recognized in domestic arbitration. Given the exceptional nature of interpretative awards, their issuance must be subject to stringent scrutiny, and undue expansion of their scope must be prevented.

It is advisable that interpretative awards under domestic law and international commercial arbitration be granted uniform legitimacy to ensure that arbitral awards enjoy unimpaired enforceability, free from any doubt. By preventing the partial nullification of significant awards, this approach would eliminate procedural delays and disrespect for the intent underlying such awards. Consequently, not only would the enforcement of arbitral awards be facilitated, but the likelihood of voluntary compliance would also increase. Therefore, interpretative awards must be addressed in domestic legislation through explicit, comprehensive, and carefully drafted provisions.

In this regard, international precedents—some of which have involved the Iranian government, as discussed in this article—may serve as a guiding light for formulating clear and unambiguous legal standards. Indeed, it may be hoped that the legislature will go beyond existing frameworks and, in addition to expressly recognizing the feasibility and characteristics of interpretative awards, also define the elements required for a valid request for interpretation. This would establish a consistent and comprehensive practice, as international experience demonstrates that prior to engaging with the concept of interpretative awards—particularly given the potential for bad-faith tactics by losing parties and abusive requests—jurisdictions often face challenges in determining what constitutes a valid request for interpretation.

Such a request must be grounded in the existing record; aim to clarify the meaning and scope of the award (not to alter it); and identify the ambiguous language based on clearly articulated reasoning and provide its definition, rather than introducing new arguments extraneous to the case record.

Furthermore, the legislature must expressly specify the nature of the ambiguity justifying an interpretative award: Must the parties hold conflicting interpretations of the award, or is a unilateral claim of ambiguity sufficient? Failure to clarify this threshold risks inconsistent rulings and subjective judicial approaches.

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

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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.

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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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A Look at Contractual Compensation in the Practice of the Iran-United States Claims Tribunal

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ABSTRACT

The principle of full compensation for damages is an accepted tenet in law, requiring that all damages incurred by the injured party be compensated. This study examines the methods of contractual compensation in the Iran-United States Claims Tribunal. First, the concept of the principle of contractual compensation and its conditions are discussed in various conventions and international legal documents. Given that the Tribunal represents one of the largest case-specific international arbitrations, its opinions and rulings can significantly influence or, at the very least, elucidate the practical aspects of arbitration within the realm of international law. This paper presents the rulings of the Tribunal, with a focus on decisions related to contract termination, reasonable compensation, and outstanding invoices. The findings indicate that in most cases, the Tribunal has awarded interest for damages and has followed a monetary approach to compensation.

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Introduction

Since ancient times, individuals have relied on one another to meet their needs. With the advancement of society and significant changes within it, individuals transformed into legal entities. This means that not only did individuals have needs, but they also began to create legal personalities by coming together, allowing groups to become parties capable of asserting rights and obligations.

One of the primary methods through which individuals incur obligations is through contracts. Historically, contracts have been established, both verbally and in writing, among various nations. As societies have evolved and legislative bodies have been formed, specific conditions for the formation, execution, and termination of contracts have been established for the parties involved.

It must be noted that some contracts are inherently unenforceable, and even if enforced, they may not be fully executable. Such non-fulfillment can lead to damages for the party benefitting from the obligation. Consequently, legislators contemplated establishing regulations to address such situations. Despite these efforts, legislators have not been able to delineate all governing regulations regarding non-fulfillment of obligations by the parties. Therefore, it has been mandated that, in these circumstances, one must first consider the stipulations outlined in the contract created by the parties. Where the parties remain silent on specific issues, supplementary laws or customary practices should be consulted.

In today›s world, with the expansion of trade among various nations, the nature of contracts has evolved. This does not imply that the foundational principles have changed; rather, they have taken on new forms. Modern contracts may be formed between states or individuals of different nationalities, potentially executed in a third country, governed by the laws of a fourth country, and even enforced in a fifth country.

Before the Islamic Revolution of 1979, Iran was a developing nation with numerous contracts established between Iranian natural and legal persons and foreign entities. Many of these contracts were concluded prior to 1979, but some continued post-Revolution.

The primary focus of this study is on the contracts established between the governments of Iran and the United States, or between their respective natural and legal persons, which can be categorized into three groups:

1. Contracts that were completed before the 1979 Revolution.

2. Contracts that continued after the Revolution but became unenforceable due to the prevailing conditions.
3. Contracts that retained their enforceability post-Revolution but were nonetheless suspended.

For the first category, there are no significant issues as these contracts were concluded and settled. However, there were instances where contracts were executed, but settlements were not finalized, leading parties to seek resolution. The two remaining categories comprised incomplete contracts requiring clarification from the new Iranian government. Despite some contracts being left unfinished, others were being pursued, albeit slowly. This situation escalated when, in 1979, students known as the «followers of the Imam›s line» seized the U.S. Embassy in Tehran. From that point onward, contracts and exchanges between Iran and the U.S. underwent a significant transformation, particularly following the hostage crisis, which shifted relations from a relatively normal state to an abnormal one.

As per the Algiers Accords, disputes between the governments of Iran and the United States, as well as those between their citizens, were addressed through specific measures, leading to the formation of the «Iran-United States Claims Tribunal.» This allowed parties to refer disputes arising from contracts, expropriations, and nationalizations to the Tribunal. The Algiers Accords outlined the conditions for accepting claims and emphasized the governing law for contracts, along with the necessary procedural rules for adjudicating these disputes.

With the identification of unresolved contracts and the determination of the appropriate forum for their resolution, the main subject concerns the compensation for damages resulting from breaches of contracts and the non-fulfillment of obligations. The Tribunal must evaluate the contracts, consider the arguments of the parties regarding the damages incurred, and determine compensation in accordance with the principle of full restitution for all losses suffered by the aggrieved party.

Considering that the Tribunal is one of the largest ad hoc arbitration bodies in the world, and given that contract values often exceed several million dollars, analyzing the Tribunal›s perspectives and practices is crucial and informative. Some legal scholars argue that the Tribunal possesses international significance, and its precedents may be cited in other international legal disputes. The involvement of esteemed international legal scholars and arbitrators lends further authority to its rulings, establishing them as secondary sources of law, namely the opinions of legal experts. Despite the Tribunal being established over three decades ago, it continues to operate, indicating a substantial volume of complex cases, which distinguishes it from similar institutions.

1. Chapter One: Conception and Basis of the Principle of Contractual Compensation and Its Characteristics

In this chapter, we will explore the fundamental question: what is the principle of compensation for damages? What is its scope?

1.1. Section One: Concept of Full Compensation for Damages

In legal terms, a harm is an unlawful injury inflicted by one person upon another.[1] This understanding has long been established in both domestic and international legal systems, necessitating that due

1 Katouzian N, *Non-Contractual Obligations, Civil Liability, General Rules* (1st edn, University of Tehran Publications 2008) 242.

to the illegitimacy of harm, and for the sake of justice and order, all damages inflicted upon the injured party must be compensated fully. Partial compensation undermines the concept of justice.

Thus, compensation for damages is a response to breaches of contractual obligations and serves as a remedy for contractual duties. A remedy for breach of contract is effective and useful only when it compensates for all consequences of the violation of rights. This principle, known as the principle of full compensation for damages, is fundamental and rational. However, it is essential to clarify its precise meaning and limits. We can assure ourselves of the completeness of compensation by establishing a benchmark for evaluation.

The concept of full compensation for damages ultimately relates to the objective of such compensation:[1] when and by what criteria can we assert that damages have been fully compensated? In tort liability, the aim of compensation is to restore the injured party to the position they were in before the harmful act occurred. This means rectifying all consequences of the damage, thus achieving full compensation.

In the context of contractual liability, the precise meaning of the principle of compensation for damages corresponds to the question of whether the injured party is restored to the position they would have held had the contract been performed.[2] If the harmful act itself was the contract›s conclusion, compensation should aim to return the injured party to the state prior to the contract›s signing, especially in cases where the contract is deemed invalid. In such instances, full compensation requires restoring the injured party to their pre-contractual position.

However, if the breach of contract is not the act of concluding the contract, and the contract is validly executed, the purpose of compensation is to eliminate the repercussions of the harmful act, namely the breach of obligation. The injured party should be placed in a position as if they had fulfilled their contractual obligations.

Therefore, it is crucial to examine these two aspects carefully to identify the concept of the principle of full compensation for damages in each case:

1.1.1. A. The Principle of Compensation for Breach of Contract.

When a contract is formed, it is subject to specific enforcement mechanisms across all legal systems. Nonetheless, all systems respect contracts, establishing them as fundamental and inviolable.[3]

Consequently, since all contracts entail both financial and non-financial rights and benefits, any breach of obligation by either party that causes harm to the other must be fully compensated. Here, the contract›s lawful execution necessitates restoring the injured party to a situation as if the contract had been duly executed. This perspective ensures that all benefits derived legitimately from the contract are compensated, as returning the situation to its pre-contractual state would deprive the injured party of their rightful claims arising from a valid contract.

Thus, to achieve full compensation for damages, actions must be taken to ensure that the injured party can recover all lost benefits, without resulting in their situation being improved

1 Ranjbar M R, *Determining Damages Arising from Breach of Contract* (1st edn, Mizaan Foundation 2008) 22.
2 Ibid.
3 To examine the opinions in this regard, see: Seyed Mostafa Mohaghegh Damad, 'The Principle of Necessity in Contracts and Its Applications in Imami Jurisprudence' (2012) Journal of the Faculty of Law and Political Science, No 12.; Civil Code of Iran, art 219.; Civil Code of Iran, art 1134.; Sale of Goods Act 1979 (UK), s 52(1).

beyond what it would have been had the contract been performed. This issue presents both positive and negative aspects, which we will address.

1.1.1.1. Positive Aspect of the Principle of Full Compensation for Damages

This aspect of the principle of full compensation for damages means that the injured party should not find themselves in a worse position after compensation than they would have been had the obligation been fulfilled. The contract inherently provides benefits and advantages to the obligee. Additionally, indirect damages suffered by the obligee must also be compensated. Only in this manner can the principle of full compensation for damages be effectively applied, ensuring that the losses of the obligee are addressed.

1.1.1.2. Negative Aspect of the Principle of Full Compensation for Damages

The simple interpretation of this aspect of the principle is that compensation should not place the obligee in a better position or grant them any undue advantage.[1] The obligor should not be compelled to pay damages exceeding the actual harm suffered by the injured party. If this occurs, the payment would be considered punitive, which is a characteristic of criminal law. In private law, the goal is not punishment but rather the restoration of the injured party›s losses. Viewing the issue from this perspective leads to the following conclusions:

1. **Costs Incurred by the Injured Party**: The costs incurred by the injured party in entering into the contract or fulfilling their obligations, such as office expenses, banking fees, and travel costs, need not be compensated. Thus, safeguarding the interests and position of the injured party does not imply the elimination of their obligations and corresponding costs. If, due to other reactions, such as rescission or reduction of payment, the injured party recovers certain costs they incurred, these amounts should be deducted from their total damages.
2. **Entering into Unsuitable Contracts**: If a person enters into an unfavorable contract that weakens their position relative to before the contract was formed, such as purchasing a gold item whose market value subsequently decreases, the injured party cannot demand the original value of the obligation from the obligor due to the breach. Essentially, the damages incurred correspond to the value of the obligation, which in this case is less than the price paid. The goal is not to compensate for losses from an unsuitable contract but to address losses arising from the breach of obligation.
3. **Prohibition of Double Compensation**: This aspect also implies that no damage should be compensated more than once, even if the compensation is deemed self-evident. This can be referred to as the principle against double recovery.[2]
4. **Conclusion on Compensation Amount**: In determining compensation, not only should the damages from the contract be accounted for, but also the benefits the obligor gained due to the breach of contract. A fundamental condition for this consideration is

1 This matter is articulated in Article 9:502 of the Principles of European Contract Law as follows: The general measure of damage is such sum as will put the aggrieved party as nearly as possible into the position in which it would have been if the contract had been duty performed. Such damages cover the loss which the aggrieved party has suffered and the gain of which it has been deprived.

2 Katouzian, *Non-Contractual Obligations, Civil Liability, General Rules* (2008) 93-97.

the establishment of a causal relationship between the benefit obtained and the breach of obligation, meaning that had the breach not occurred, the acquisition of that benefit would not have been possible.[1]

1.1.2. B. Concept of the Principle of Full Compensation for Damages in Relation to Invalid Contracts

Various damages may arise from an invalid contract for both parties; however, these should not be classified as contractual damages. Contractual liability arises only when a contract has been properly executed. In cases where the contract has not been correctly formed, there is fundamentally no contract, and damages cannot be claimed under contractual liability. This raises the question: can compensation be sought under tort liability instead?

This question has several dimensions:

- **First Scenario**: In cases of invalid contracts, neither party may be at fault. In such instances, due to the absence of fault, neither party bears liability. This is analogous to contracts that are impossible to fulfill.
- **Second Scenario**: Both parties may share fault in the invalidity of the contract, having knowingly entered into the agreement. In this case, no liability attaches to either party, as both acted to their detriment, such as in the case of an unlawful contract.
- **Third Scenario**: Liability can be attributed to one party regarding the invalidity of the contract, such as in the case of a quasi-contract. Here, based on general principles of tort liability, the injured party can claim damages, as the harmful act is the very act of entering into the contract. Full compensation occurs when the injured party is restored to their position prior to the contract›s conclusion.

These assumptions can be clearly inferred from the principles found in the European Contract Law and the Principles of International Commercial Contracts.[2]

Consequently, unlike the situation where damages arise from a legitimate breach of obligation, in cases of invalid contracts, the injured party can claim all expenses incurred, including costs for entering into the contract, banking fees, travel expenses, etc.

Despite the differences in nature and objectives of damages in contractual liability and those arising from contract invalidity, it appears that the methods for calculating damages in both cases are closely related. In the latter situation, the opportunity for the injured party to enter into a valid contract has been lost.[3]

Now, it is essential to highlight how to distinguish between contractual liability and

1 See also: Subsection 1 of Article 7.4.2 of the UNIDROIT Principles of International Commercial Contracts, Ganj Danesh, 1999.; Article 75 of the Vienna Convention.

2 Subsection 1 of Article 4:117 of the Principles of European Contract Law stipulates: "A party who avoids a contract under this chapter may recover from the other party damages so as to put the avoiding party as nearly as possible into the same position as if it had not concluded the contract, provided that the other party knew or ought to have known of the mistake, fraud, threat, or taking of excessive benefit or unfair advantage."; Additionally, Article 18.3 of the UNIDROIT Principles of International Commercial Contracts provides: "Irrespective of whether or not the contract has been avoided, the party who knew or ought to have known of the ground for avoidance is liable for damages so as to put the other party in the same position in which it would have been if it had not concluded the contract."

3 G Treitel, *The Law of Contract* (Sweet & Maxwell, London 1995).

liability arising from the invalidity of the contract. Initially, the criteria for differentiation seem straightforward:

1. If a contract has been properly formed and the harmful act constitutes a breach of that contract, we classify it as contractual liability.
2. If the contract is fundamentally invalid and the harmful act is the contract itself, the liability pertains to tortious rather than contractual principles.

While these criteria are generally valid and sufficient, some cases can be quite complex.[1]

According to the United Nations Convention on Contracts for the International Sale of Goods, Article 4(1) pertains to the validity of contracts and does not explicitly address liability arising from contract invalidity.[2]

The European Principles of Contract Law also indicate that if one party declares the contract invalid, the other party may seek damages from them, ensuring that the party declaring invalidity does not gain a more favorable position than if the contract had never existed. This condition applies only if the other party was aware or should have been aware of errors, fraud, coercion, or unjust enrichment.

In the Principles of International Commercial Contracts, drafted by the International Institute for the Unification of Private Law, Article 18(3) states that regardless of the invalidity of the contract, the party aware of the invalidity or who should reasonably be aware is liable for damages to the injured party. They must restore the injured party to the position they held prior to the contract in order to achieve full compensation.

In light of these provisions, it appears that liability arising from breaches of contract can be accepted and is fundamentally based on fault. This fault must be attributed to the responsible party when they are aware or should reasonably be aware of the contract›s invalidity. Since the act of forming the contract itself constitutes a harmful act, full compensation must be provided to the injured party, restoring them to their pre-contractual position.

1.2. Section Two: Basis and Scope of the Principle of Full Compensation for Damages in Contractual Liability

In examining the basis of contractual liability, a fundamental question arises: does contractual liability, like contractual obligations, stem from the mutual consent of the parties, or is it entirely dependent on the will of the legislator, similar to tort liability?[3]

This question can be answered by stating that contractual liability is not solely governed by the will of the legislator or the parties; rather, it is a relative matter. Certain aspects are entirely within the legislator›s control, such as when a contract stipulates that a third party is responsible for paying taxes.[4] In this case, the obligation is influenced by both the legislator›s will and the parties' agreement.

1 Ranjbar, *Determining Damages Arising from Breach of Contract* (2008) 25.
2 Article 4: This convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this convention, it is not concerned with: A) the validity of the contract or of any of its provisions or of any usage; B) the effect which the contract may have on the property in the goods sold.
3 Katouzian, *Non-Contractual Obligations, Civil Liability, General Rules* (2008) 93.
4 Assuming that the condition has been validly established.

In the context of contractual liability, it cannot be precisely stated whether it is the will of the legislator or the will of the parties that prevails; instead, it is crucial to assess the extent and nature of each type of enforcement mechanism for contractual obligations. These enforcement mechanisms can be divided into two categories:

1. **Legal Remedies**: Legal remedies refer to the situation where, upon entering a contract, the parties may not consider how to address the failure of the other party to fulfill their obligations. The legislator thus seeks to identify a range of remedies arising from a breach of contract. If the parties do not specify remedies in the contract, the law will provide them. However, these legal remedies are generally subsidiary, allowing parties to waive or modify them within the contract, such as the right to rescind, the right to withhold performance, etc. A clear example of the close relationship between the will of the legislator and the parties is the inclusion of liquidated damages clauses, which will be discussed in detail in later sections.
2. **Contractual Remedies**: Sometimes, certain contractual remedies, after a period of application, might be recognized by the legislator as beneficial, thus formalizing them as legal remedies - this reflects the historical development of contractual liability in Iran.[1]

Some legal scholars argue that the current legal systems in many countries regard contractual liability as a legal remedy.[2] However, this interpretation should not be overstated, as these remedies exist alongside other enforcement mechanisms, such as specific performance, the right to rescind, etc., introduced by the legislator to better secure contractual obligations. In other words, these scholars believe that the primary source of contractual liability originates from the legislator›s will.

It is noteworthy that, as mentioned, these provisions are not necessarily mandatory and can be waived or altered. For instance, under English law, if the stipulated liquidated damages are excessively high compared to actual damages, that clause may be deemed unenforceable.[3]

Thus, if we fully accept the parties› will regarding compensation for contractual liability, it is possible that not all damages will be compensated. Conversely, if one subscribes to the view that contractual liability is a legal remedy, it could potentially compensate for all damages.

Therefore, what must be established in the parties› will, either explicitly or implicitly, is the limitation or waiver of full compensation for damages. However, it is not necessary to seek proof of the parties› intent to establish contractual liability.[4]

At times, various reactions occur in response to a breach of contract, and multiple responses may arise simultaneously. For example, in addition to seeking specific performance or rescission of the contract, the obligee may also request damages for delay in performance. The injured party must be restored to a position where their damages are fully compensated, without ending up in a better position. Some legal scholars believe that legal systems have not fully achieved this objective.

1 Ranjbar, *Determining Damages Arising from Breach of Contract* (2008) 94.
2 Ibid, 95.
3 Treitel, *The Law of Contract* (1995).
4 See Katouzian, *Non-Contractual Obligations, Civil Liability, General Rules* (2008).

For instance, in Iranian law and Imamite jurisprudence, the discussion of contractual liability has not addressed issues such as the formation and dissolution of contracts. Instead, it has focused solely on enforcing contractual obligations through means such as specific performance, the right to withhold performance, or the right to rescind and reduce the price. Thus, the subject of contractual liability and breaches arising from contracts has not been adequately examined.[1]

Several relevant discussions arise within international conventions, notably in Article 74 of the United Nations Convention on Contracts for the International Sale of Goods (CISG), which states:

> *«Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach fore saw or ought to have fore seen at the time of conclusion of the contract, in the light of facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract."*

While Article 74 does not explicitly state the principle of full compensation for damages, it has been interpreted by the secretariat of the Vienna Conference prior to the adoption of the convention, particularly in the official commentary on Article 70 of the 1978 draft (which later became Article 74), to embody the philosophy of full compensation. This interpretation suggests that if the obligated party had fully performed their obligations, the principle of full compensation for damages would apply. This concept has also been inferred from arbitration decisions based on this article, a point emphasized by some legal scholars.[2]

From Article 74 of the CISG, both the positive and negative aspects of the principle of full compensation for damages can be deduced.[3] A key question, however, is whether the foreseeable damages mentioned in this article include loss of profit.

In the Principles of International Commercial Contracts, the principle of full compensation for damages is explicitly articulated in Article 7(4)(2), which states that:

1. The aggrieved party is entitled to full compensation for harm sustained as a result of the non-performance. Such harm includes both any loss suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or harm.
2. Such harm may be non-pecuniary and includes, for instance, physical suffering or emotional distress.[4]

In the European Principles of Contract Law, although the phrase "principle of full compensation for damages" is not explicitly mentioned, Article 9:502 indicates that damages

1 Jafari Langroudi MJ, 'Contractual Liability' (1963) 1 *Legal Journal of the Ministry of Justice*.
2 C Massimo Bianca and Michael Joachim Bonell, *Commentary on the International Sales Law: The 1980 Vienna Sales Convention* (Giuffrè 1987).
3 Noori MA, *Principles of International Commercial Contracts* (1st edn, International Institute for the Unification of Private Law, Ganj Danesh Library 1999). [In Persian]
4 Shoariyan E and Torabi E, *Principles of European Contracts and Iranian Law* (Forouzesh Publication 2010). [In Persian]

should be awarded in such a way that the injured party is put in the position they would have enjoyed had the contract been fulfilled.[1]

Thus, in both the Principles of International Commercial Contracts and the European Principles of Contract Law, the principle of full compensation for damages is expressed more explicitly compared to the CISG. This underscores a consistent recognition of the need for comprehensive compensation in international contract law, aiming to ensure that injured parties can recover fully from losses attributable to breaches of contract.

2. Chapter Two: Compensation for Damages in the Tribunal

The Tribunal adheres to the principle of compensation for damages, asserting that when a contract is breached, the injured party is entitled to compensation that places them in the economic position they would have achieved had the obligations been fulfilled.

Another principle regarding compensation for damages in contracts is that the claimant is not entitled to damages that could have been avoided with reasonable effort. Therefore, if the injured party can demonstrate that the obligor had opportunities resulting from the breach that could have led to profits through reasonable efforts, that amount will be deducted from the sum that could have been claimed.

Breach of contract in the Tribunal has manifested in several ways:

- The obligor or the obligee unilaterally terminated the contract.
- The obligor and obligee rendered the contract void and refrained from continuing their collaboration.
- The parties mutually rescinded the contract.
- The contract has been rendered null and void.

In some cases, the contract is fundamentally breached, or even if it has not been breached, the obligor has performed actions beyond the contractual obligations. In such instances, based on the principle of unjust enrichment, the party that performed the extra work is entitled to reasonable compensation (quantum meruit).

In other situations, some contracts were completed, but invoices for work performed have not been paid. Alternatively, a contract may have been unilaterally breached or otherwise violated, with one or more invoices for completed work remaining unpaid.

The Tribunal has frequently noted that unrest in major cities constitutes classic force majeure conditions, which cannot be attributed to the Iranian government, thus absolving it from liability for damages. This principle applies between private parties as well, meaning that one party cannot claim damages due to disruptions in work resulting from force majeure, unless such conditions can be attributed to the other party's fault.

Moreover, the Tribunal has concluded in many cases that the ongoing force majeure conditions led to the termination of contracts between the parties, rendering many contracts impossible to fulfill by mid-summer 1979.

1 "The general measure of damages is such as will put the aggrieved party as nearly as possible into the position in which it would have been if the contract had been duly performed. Such damages cover the loss which the aggrieved party has suffered and the gain of which it has been deprived."

Another notable point is that the only case where a ruling was made in favor of the defendant based on the principle of fundamental change in circumstances was the *Questech* case (91-59-1).[1] In this case, the Tribunal ordered the defendant to pay the unpaid invoices, including profits up to the date of cancellation, as well as other costs to the claimant. However, future profits that the claimant might have gained from the continuation of the contract were not applicable here due to the changes in circumstances.

Other rulings from the Tribunal where loss of profit was deemed non-compensable due to cancellation should be distinguished based on the facts discussed in those cases, as they did not reference contractual conditions or exceptional circumstances like the current case. This is exemplified in cases like the *Pomeroy* case,[2] where loss of profit was not awarded due to the unique conditions of that case.

Regarding loss of profit, it is essential to note that the Tribunal has generally not awarded compensation for loss of profit in many cases. In rare instances, it has granted such claims, particularly when one party has demonstrated a state of readiness to perform, which the Tribunal recognized and subsequently awarded loss of profit. For instance, in the case of *Seismograph*,[3] since the contract amount was fixed, the Tribunal determined a profit margin of 10% based on the contract stipulations. The non-breaching party was to be placed in a position they would have occupied had the breach not occurred.

In relation to quantum meruit and the theory of unjust enrichment, this principle is widely accepted and codified in many jurisdictions. The principle prohibits unjust enrichment and is inherently flexible, as it aims to balance the situation between two parties, where one has caused damage to the other without justification. All circumstances must be considered in this evaluation.

According to this principle, compensation must be paid, aligning with the reality that the discussed actions are inherently unlawful. However, this cannot apply if it contradicts international law. In cases of unjust enrichment, there should not be a justification such as a contract with the other party that allows the injured party to claim damages based on that.

There is a divergence of opinion on the basis of calculating damages. The prevailing view seems to suggest that damages should equate to the benefits that the state has derived, and if the state has not gained any benefit, no compensation is payable.

Equity clearly mandates that the situation as it was must be taken into account. For this reason, international Tribunals do not maintain a uniform approach concerning significant circumstances that must be considered, including the amount of investment, the duration for which foreign investment could be utilized, and the benefits actually derived by the host country from the investment.

Another noteworthy point is that the Tribunal rarely, unlike many accepted conventions and commercial contract rules, has addressed bodily injuries resulting from contract termination, as outlined in Article 2(1) of the Statement on Claims Settlement.

The Tribunal employs various methods for compensating damages, including both monetary

1 IUSCT, *Questech, Inc v Iran* (180-64-1) Vol 9, 150-256.
2 IUSCT, *R N Pomeroy v Iran* (40-50-3) Vol 2, 564-592.
3 IUSCT, *Seismograph Service Corporation v NIOC* (420-443-3) Vol 22, 29-183.

and non-monetary remedies. It has utilized methods such as restitution of property, resale of goods (replacement transactions), providing equivalent goods, and monetary compensation for damages. Generally, the Tribunal has favored monetary compensation, particularly in the form of interest. Due to the importance and frequency of rulings, two branches of the Tribunal have specified a particular method for calculating interest. For instance, in the *Sylvania* case,[1] the Tribunal noted that, given the lack of a consistent and uniform practice, while branches typically acted uniformly in awarding interest based on damages from delayed payments, the Tribunal has never ruled in favor of compound interest. However, the rates applied by the Tribunal have rarely been identical.

The Tribunal accepts rates stipulated in contracts that have been mutually agreed upon by the parties, stating that unreasonable or usurious rates will not be applied (as seen in case No. 2-35-14).[2] If the interest rate is not specified in the contract, the Tribunal uses its discretion to apply rates it deems fair, typically ranging from 8.5% to 12%.

According to the First Chamber of the Tribunal, justice and fairness necessitate a consistent approach to awarding interest in the cases presented before this chamber. The rates established in contracts should generally be accepted by the Tribunal unless there are specific exceptional circumstances. If the interest rate is not specified in the contract, the Tribunal calculates the interest based on the amount that the winning party could have reasonably earned through a conventional investment in their country had they received the awarded amount promptly.

In the United States, six-month deposits are a type of investment, and their average interest rates can be sourced from an official and reliable source. The Tribunal notes that precedents exist in which interest awarded in individual and unique cases has been calculated based on the borrowing rates of banks in the claimant's country. Occasionally, the Tribunal has also utilized the prime lending rate, which reflects the rate charged to the most reputable bank customers in the United States.

However, given the circumstances of this Tribunal, the First Chamber emphasized the need for uniform treatment. Therefore, it is more appropriate to determine the interest rate based on the investment returns during the relevant period. To achieve this, interest on the awards can be calculated based on the rates of bank deposits that are generally available to all investors.

Comparatively, borrowing rates vary depending on the creditworthiness and reputation of borrowers, many of whom cannot secure loans at prime rates, and some may experience changes in creditworthiness over the relevant period. Additionally, not all parties suffering from delays in payment are actually borrowing. For these reasons, setting a generalized interest rate based on the prime rate for all awards is often seen as unrealistic.

The Tribunal points out that in many courts in the United States, a uniform interest rate is often applied due to legal requirements. It appears that statutory interest rates in many jurisdictions in the United States, while adjusted periodically according to changing financial and economic conditions, are generally lower than prime rates due to various legislative considerations, including delays in passing laws. Nevertheless, many law-makers and judges agree that applying such rates is generally fair.

1 IUSCT, *Sylvania Technical Systems, Inc v The Government of the Islamic Republic of Iran*, Case No 64.
2 IUSCT, *R J Reynolds Tobacco Company v Government of the Islamic Republic of Iran and Others* (Ruling No 2-35-14).

The fact that all American claimants in the Tribunal benefit from the guarantee provided by the security account established under the Algiers Accords can also be viewed as a justification for using a generalized investment return rate, even if, in a specific case, a claimant may have borrowed at a higher rate, as such guarantees are not typically available in most international rulings or domestic court decisions. However, some American arbitrators, including Mr. Holtzman, have raised objections to this perspective.

It is noteworthy that the average interest rate paid on six-month deposits in the United States from 1979 to the end of 1984 was approximately 12.12%, which corresponds to the relevant period in the *Sylvania* case.

In the *McCollough & Company* case (No. 3-19-225),[1] the Third Chamber of the Tribunal expressed that the award of interest, like other rulings made by the Tribunal, must be based on respect for the law, and in this regard, as in any other case, the governing law must be identified by the Tribunal according to the principles outlined in Article 5 of the Claims Settlement Statement.

Determining the governing law in this context requires the Tribunal to reference the practices followed by relevant judicial authorities. However, identifying the applicable law is challenging due to ambiguities and contradictions present in various domestic legal systems, international law, and commercial customs.

In most legal systems, if not all, when interest is awarded as part of compensation for damages resulting from a breach of contract, the applicable interest rates are typically determined based on statutory rates, unless specific exceptional circumstances exist. However, the rates determined in this manner can vary significantly across different legal systems. This variability is also evident in the determination of the date from which interest is calculated, which may depend on the legal system in question and the circumstances involved. This date could be tied to the date of the damage, the date of a formal payment demand, the court ruling date, or even another specified date.

This diversity is particularly pronounced in the context of the Iranian legal system following the Islamic Revolution, which, like certain countries adhering to constitutional principles, prohibited the payment of any interest. In contrast, the U.S. legal system typically awards interest, and although rates can vary significantly depending on the governing law, there seems to be a trend toward applying similar commercial interest rates.

The differences and variety in practices among international Tribunals regarding interest awards are likely even greater. International arbitration awards where interest has been granted or where very low rates have been determined tend to be somewhat outdated or pertain to non-commercial disputes between states. Consequently, the precedential value of such awards is limited, and it is difficult to extract any universal rule from them.

In recent years, the common practice in cases involving disputes between states or relevant governmental organizations and foreign companies - where the parties have directly referred their dispute to international Tribunals or through diplomatic protection - has shown a wide

1 IUSCT, *McCollough & Company, Inc v the Ministry of Post, Telegraph and Telephone, the National Iranian Oil Company and Bank Markazi*, Case No 89.

range of awarded interest rates. Notable examples indicate that awarded rates have ranged from 5% to 14.5%, with common rates around 7.5%, 8%, 9%, 10%, and up to 12%.

This variability is also reflected in the determination of the start date for calculating interest. In some disputes, the commencement date for interest has been set to when the obligation to pay became due or at least has a direct connection to the date the damage occurred. In other cases, the start date for interest has been declared as the date of the ruling, the date of notification, or a specified time after the ruling. In some instances, reference has been made to the law governing the contract in question. In other cases, no specific legal framework has been cited, and the determination of the interest calculation date has been left to the discretion of the arbitrator.

In most cases, simple interest has been calculated, but there have been instances where compound interest has been awarded. However, the Tribunal has never awarded compound interest. Additionally, sometimes, a percentage has been added to the interest rate due to inflation.

Given such a diverse array of practices, it is challenging to arrive at specific conclusions. Nonetheless, the Tribunal can conclude that, contrary to the well-developed rules governing compensation for damages arising from breach of contract - where the principle of full compensation is usually applied - there are no uniform regulations regarding interest in international arbitration, and no similar rules concerning interest rates or calculation dates have been established by the Tribunal's practice. The frequent use of the term "fair" in determining the selected rate and recurrent references to "the discretion of the arbitrator" highlight this point.

However, the lack of a uniform rule does not imply the absence of general principles. On the contrary, two general principles or guidelines can be inferred from common practices in international arbitration, which are conceptually broad but require careful and nuanced application.

The first principle is that, under normal circumstances, particularly in commercial disputes, interest is awarded to the winning party as compensation for delays in payment concerning the awarded amount. However, this delay varies according to the date recognized as the obligation to pay. The obligation date could be the date of the original damage, the settlement of the debt, the date of a formal payment demand, the start date of arbitration or litigation, the date of the arbitration ruling, or the date when a judge or arbitrator's decision should logically have been executed.

The second principle is that the interest rate must be reasonable, taking into account all relevant circumstances, and the Tribunal has the right to consider such circumstances under the authority granted to it in this regard.

The circumstances that should be considered in determining a "reasonable" or "fair" rate are numerous. Given the multitude and complexity of these circumstances and the need to assign appropriate weight and credibility to each, international or transnational Tribunals typically refrain from enumerating them in their rulings. This approach likely aims to avoid excessive elaboration.

Nevertheless, based on the limited guidelines derived from the practices of the Tribunal, the following circumstances can be identified for determining interest rates:

1. Any contractual conditions that may apply in setting the interest rate.
2. Regulations and principles of the governing law of the contract.
3. The nature of the facts giving rise to the damages.
4. The nature or amount of the awarded compensation, especially if it includes loss of profit or recoverable costs.
5. The knowledge the breaching party may have had regarding the financial consequences of their breach for the other party.
6. Common rates in relevant markets.
7. Inflation rates.
8. etc.

These principles, inferred from the common practices in international arbitration, are considered part of commercial law and international law, in the context of Article 5 of the Claims Settlement Statement. They reflect the nature of the international Tribunals that apply them and the disputes presented, which are viewed as a form of commercial customary law, gaining particular relevance in relation to this Tribunal.

However, the Tribunal must also take into account its own characteristics when applying these principles. The most significant of these is that the Tribunal, unlike other transnational arbitration bodies formed under a contractual clause to resolve commercial disputes, is established by an international treaty and derives its jurisdiction from that treaty, encompassing a vast number of cases. Thus, the applicable law must be determined by the Tribunal according to the conditions outlined in Article 5 of the Claims Settlement Statement. Additionally, given the current structure of the Tribunal, the time lapse between the initial petition and the issuance of the final ruling can be lengthy and, in many cases, exceeds the usual delays seen in international arbitration or domestic litigation. Conversely, enforcing awards in favor of U.S. nationals, who benefit from the full enforcement guarantees provided by the security account under Article 7 of the General Statement, requires no waiting or formalities.

The aforementioned principles have been applied by the Tribunal, which typically establishes a moderate interest rate under the terms «fair» or «reasonable,» leaving the selection to the discretion of the arbitrator. As seen in the ruling in the *Sylvania* case, the chambers of the Tribunal have not always reached the same conclusions. The variation in rates applied by the chambers can be attributed to the differing circumstances of each case.

Moreover, the diversity of cases referred to the Tribunal makes it challenging to apply a fixed and immutable interest rate across all cases. Therefore, it is preferable for the start date of interest calculations to be determined on a case-by-case basis, considering all relevant factors.[1]

Conclusion

The principle of compensation for damages is a widely accepted tenet in law, requiring that all damages incurred by the injured party be compensated. This study examined contractual damage compensation in the Iran-U.S. Claims Tribunal. The Tribunal often delineates that unrest in major

1 Ziaie Tabatabaie HR, *Methods of Contractual Damage Compensation in the Iran-U.S. Claims Tribunal* (Master's Thesis, Islamic Azad University, Central Tehran Branch, Summer 2014). [In Persian]

cities constitutes force majeure conditions that cannot be attributed to the Iranian government, thus relieving it from liability for damages.

The Tribunal has employed both monetary and non-monetary methods for compensation due to contract breaches. It has utilized methods such as restitution of property, resale of goods, providing equivalent goods, and monetary compensation. While the Tribunal has occasionally applied non-monetary compensation methods, it predominantly follows monetary compensation through interest.

After reviewing the Tribunal›s awards up to 2009 regarding contractual compensation methods, it is evident that although the Tribunal rarely used non-monetary methods for compensating damages from contract breaches, it primarily used monetary compensation in the form of interest. The conclusion is that in most cases, the Tribunal has awarded interest to compensate for damages, adhering to monetary compensation methods.

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Res Judicata in the Precedent of the Iran-United States Claims Tribunal

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ABSTRACT

The principle of res judicata serves as a fundamental pillar of adjudication within legal frameworks, prohibiting a judicial body from re-adjudicating a dispute that has already been resolved and for which a judicial decision has been rendered. This paper explores the jurisprudence of the Iran-United States Claims Tribunal, critically analyzing the Tribunal's reasoning and approach to res judicata. A descriptive-analytical analysis, alongside a meticulous examination of the Tribunal's rulings, reveal inconsistencies in its application of res judicata. At times, the Tribunal has raised the threshold for its application compared to similar courts and Tribunals, whereas at other instances, it has broadened its scope. Over time, the Tribunal has not remained consistent with its prior findings regarding res judicata, occasionally excluding certain disputes from its ambit based on insufficiently robust arguments. Furthermore, when applying this principle, the Tribunal has expanded its scope and asserted authority over all aspects of the ruling articulated in the operative part of the judgment. Consequently, a notable inconsistency exists within the Tribunal's rulings regarding the application of pertaining to the principle of res judicata.

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Introduction

The issue of *res judicata*, or the finality of judgments, constitutes a fundamental component of legal proceedings and has consistently held significant importance. The rationale behind this assertion lies in its definition. Undoubtedly, one of the primary objectives of judicial proceedings, if not the most critical one, is the attainment of justice through the resolution of existing disputes. A dispute is resolved in a manner that serves justice only when it aligns entirely with the rights of the parties involved and can effectively enforce the rights of each party to the dispute. Moreover, this is the foremost duty of the dispute resolution authority. Achieving this requires thorough examination, consideration of potential errors in the process, and efforts to rectify these errors. Ultimately, however, there must come a time when judicial examination and oversight of judges' actions conclude, the dispute must end, and the final judgment must be rendered.[1] The concept of res judicata arises when "a judicial decision with unique characteristics, rendered by a tribunal or court competent to adjudicate the matter in dispute, definitively resolves the contested issues; thus, (except in the case of appeals and similar exceptions) the matter cannot be revisited by the same parties or their representatives."[2]

The Iran-United States Claims Tribunal (IUSCT, the Tribunal), if not the most significant, represents one of the most important arbitration institutions in which Iran has been involved. It stands among the foremost international arbitration bodies in the world, distinguished by the sheer volume of disputes it has adjudicated, its duration of existence, and its exclusive jurisdiction over certain disputes between the Government of Iran and the United States.

The issue of res judicata has been approached differently by various judicial bodies. Although its foundational principles are nearly uniform across jurisdictions—generally assessing three elements: *identity of parties*,[3] *identity of subject matter*,[4] and *identity of cause of action*[5]—different bodies typically present their perspectives on this principle, occasionally expanding or limiting its application.[6] The Tribunal is no exception, having articulated and applied considerations regarding this principle in certain cases.

1 Nasser Katouzian, *The Res Judicata Effect in Civil Litigation* (11th edn, Mizan Legal Foundation 2020).

2 Peter R Barnett, *Res Judicata, Estoppel, and Foreign Judgments: The Preclusive Effects of Foreign Judgments in Private International Law* (Oxford University Press 2001) para 1.12.

3 Persona

4 Petitum

5 Causa Petendi

6 Audrey Sheppard, 'The Scope and Res Judicata Effect of Arbitral Awards' in *Arbitral Procedure at the Dawn of the New Millennium* (Reports

While nearly all disputes within the Tribunal's jurisdiction have been resolved, with judgments issued, some of the Tribunal's most significant cases, notably the case known as *B/61*, remain ongoing, and no final ruling has been rendered. Furthermore, one of the most contentious judgments issued by the Tribunal was a partial ruling related to this case, where the issue of res judicata constituted the foundation of the majority's reasoning. This ruling inflicted substantial harm on Iran's claims and interests, which Iran estimated at $2.2 billion. It appears that a lack of proper understanding regarding the application and scope of res judicata by the majority of arbitrators was a contributing factor. The issue of res judicata, both in theory and practice, necessitates considerable sensitivity and precision, as it can completely deprive a party of the right to bring a claim and, at times, not only precludes the re-filing of a claim but also extinguishes related disputes. Thus, understanding res judicata and being aware of its application by judicial bodies is critically important.

This paper examines the concept of res judicata in the context of the IUSCT, an international arbitration body with specific jurisdiction over certain disputes between the Iranian and U.S. governments and their nationals, stemming from events following the fall of the Pahlavi regime in 1979 and the establishment of the provisional government of the Islamic Republic of Iran. The study also addresses the most significant issues concerning res judicata in the Tribunal's jurisprudence and strives to analyze the Tribunal's approach to this principle. Consequently, it focuses on two crucial cases associated with this topic, which involve significant instances where res judicata has been prominently featured, with the governments of Iran and the United States as the parties to the disputes.

Finally, it is essential to note that the terms "rule" or "principle" concerning "res judicata" might be used interchangeably. This interchange is because, firstly, the discussion on this matter is not pertinent to the subject of this writing, and secondly, to maintain fidelity and accurately convey what has been stated in the Tribunal's documents, this paper refrains from favoring one term over the other and considers both as interchangeable concepts.

1. Res Judicata in the Rules Governing the IUSCT

The Tribunal, now in its fifth decade of operation, has addressed the issue of res judicata in various cases, examining it in light of existing realities and its own perspectives. The frequent citations by the parties involved (Iran and the United States in cases where both governments were litigants) and the detailed examination of individual cases, along with the issuance of specific rulings, have significantly heightened the importance of res judicata. The initial section briefly outlines the foundations and rationale for the applicability of res judicata within the Tribunal.

1.1. Res Judicata in International Law

According to some international law scholars,[1] res judicata is recognized as a general principle of law within the international legal system. By accepting this premise, one can identify the

of the International Colloquium of CEPANI, Bruylant 2005) 270.

1 Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Stevens & Sons Limited: The London Institute of World Affairs 1953) 347; PCIJ, *Interpretation of Judgments Nos 7 & 8 (The Chorzow Factory) (Germany v Poland) Judgment* (16 December 1927) PCIJ Rep Series A No 11, Dissenting Opinion of Judge Anzilotti.

existence of res judicata in international law as a general legal principle, as well as within the framework of the Permanent Court of International Justice (PCIJ) Statute,[1] specifically in Article 38(3), and likewise in the Statute of the International Court of Justice (ICJ).[2] In a statement by Lord Phillimore during the drafting of the PCIJ Statute,[3] it was noted: "That the general principles […] were these which were accepted by all nations in *foro domentico* such as certain principles of procedure, the principle of good faith, and the principle of *res judicata*, etc. "[4] Judge Anzilotti, in his separate opinion in the *Chorzow Factory* case, also recognized res judicata as a general legal principle accepted by civilized nations, as articulated in Article 38(3) of the Statute,[5] and acknowledged in Article 59, with no dissenting opinion expressed in international law.[6]

International courts and investment arbitration institutions generally adopt a similar approach regarding res judicata. Many of these courts rely on the opinions articulated in the statutes and jurisprudence of the ICJ or its predecessor, the PCIJ, referencing the practices of international dispute resolution bodies and commonly acknowledging res judicata as a principle in international law.[7]

Thus, res judicata is a well-established and clearly recognized concept in public international law.[8] This claim implies that courts and judicial bodies are capable of applying res judicata, even in the absence of explicit articulation in their documents, and this rule will not be applied only in cases where there is a clear intent not to enforce it;[9] the Tribunal is not exempt from thisprinciple.[10]

1.2. Foundational Documents of the IUSCT and Its Procedural Rules

In addition to the aforementioned discussion, the constituent and procedural documents of the Tribunal also provide grounds for the application of res judicata to the issued rulings. According to the Tribunal's procedural rules, a ruling issued by the Tribunal is final and becomes immediately enforceable upon issuance.[11] The finality of the ruling implies the inclusion of res judicata and the absence of the possibility for further review. Moreover, with respect to the Tribunal's procedural rules, the Tribunal considers supplementary rulings only concerning those claims that "have been presented during the arbitration but were not mentioned in the ruling," and the issuance of a supplementary ruling is contingent upon the Tribunal's determination of the validity of the said claim. The occurrence of res judicata can also be inferred from the contrary meaning of this provision; if a claim has not been presented during the arbitration, it cannot be heard or appended to the ruling, and therefore, the ruling cannot be altered. Thus, since the ruling is final, assuming

1 League of Nations, *Statute of the Permanent Court of International Justice* (16 December 1920), art. 38(3).
2 United Nations, *Statute of the International Court of Justice* (18 April 1946), Art. 38(1)(c).
3 Frits Kalshoven, Pieter Jan Kuyper, and Johan G. Lammers, 'International Law—General' in *Recueil des Cours* (1977) Vol IV (Tome 157 of the Collection); Riad Daoudi, *La Représentation en Droit International Public* (Librairie Générale de Droit et de Jurisprudence 1980) 405-484.
4
5 PCIJ Statute, Art 38: "The Court shall apply... 3. The general principles of law recognized by civilized nations…".
6 PCIJ, *Interpretation of Judgments No 7 & 8 (The Chorzow Factory) (Germany v Poland)* (Judgment of 16 December 1927) PCIJ Rep Series A No 11, Dissenting Opinion of Judge Anzilotti, p 27.
7 German Derbushev, *Res Judicata and Arbitral Awards* (LL.M Thesis, Central European University 2019) 60.
8 Yuval Shany, *The Competing Jurisdictions of International Courts and Tribunals* (Oxford University Press 2004) 254.
9 Ibid.
10 Mohsen Mohebi, 'The Legal Nature of the Iran-United States Claims Tribunal from the Perspective of International Law' (1994) 13 *International Legal Journal* 95.
11 IUSCT, Rules of Tribunal, Art. 32.

the presence of additional evidence, the elements of res judicata—namely, the identity of the cause, identity of the subject matter, and identity of the parties—render the ruling subject to res judicata, and it cannot be revisited, reexamined, or otherwise altered. Although the practice of the Tribunal, as will be discussed, permits reconsideration in certain limited and exceptional cases, if a claim does not fall under the category of "omission" as defined in Article 37 of the Tribunal's procedural rules, it cannot alter the issued ruling, which remains final. Consequently, the Tribunal has applied res judicata in its adjudications.

2. Res Judicata in the Jurisprudence of the IUSCT

It has been observed that the Tribunal, in light of its constituent documents and as an international arbitration body established by subjects of international law, has consistently applied the principle of res judicata in its jurisprudence. Therefore, the following discussion will focus on the most significant cases and opinions regarding res judicata, as well as how this principle has been applied by the Tribunal. Two cases, which encompass several files and rulings, will be examined in this section, as they represent the foundational approach of the Tribunal concerning the issue of res judicata.

2.1. Increased Threshold for the Application of Res Judicata in the Security Account Cases

One of the prominent cases presented to the Tribunal in this context is the *security account* case, which includes cases *A/28* and *A/33*. In October 1993, the claimants, the United States and the Federal Reserve Bank of New York, filed a case against the respondents, the Islamic Republic of Iran and the Central Bank of Iran, classified under case *A/28*. The claim was based on the alleged breach of obligations by the respondents regarding the restoration of the security account balance, established under Paragraph 7 of the Algiers Accords[1] and technical agreements[2] to ensure payment of claims against Iran. The claimants asserted that the respondents had violated their

1 In paragraph 7 of the General Declaration, which forms the basis of the current claim, it states: "As funds are received by the Central Bank pursuant to Paragraph 6 above, the Algerian Central Bank shall direct the Central Bank to (1) transfer one- half of each such receipt to Iran and (2) place the other half in a special interest-bearing security account in the Central Bank, until the balance in the security account has reached the level of $1 billion. After the $1 billion balance has been achieved, the Algerian Central Bank shall direct all funds received pursuant to Paragraph 6 to be transferred to Iran. All funds in the security account are to be used for the sole purpose of securing the payment of, and paying, claims against Iran in accordance with the claims settlement agreement. Whenever the Central Bank shall thereafter notify Iran that the balance in the security account has fallen below $500 million, Iran shall promptly make new deposits sufficient to maintain a minimum balance of $500 million in the account. The account shall be so maintained until the President of the Arbitral Tribunal established pursuant to the claims settlement agreement has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied in accordance with the claims settlement agreement, at which point any amount remaining in the security account shall be transferred to Iran."

2 Regulations relevant to this matter were also incorporated within the technical agreement, directly pertaining to this case. These regulations include the provision that whenever the balance of Account 'B' falls below 500 million US dollars, the custodian is required to notify the other parties to the agreement. Following such notification, the Central Bank of Iran must promptly deposit sufficient funds to restore the minimum balance of Account 'B' to 500 million US dollars.

Additionally, the agreement stipulates that any dispute arising from its provisions that cannot be resolved amicably may be referred by any party to the Tribunal. However, if the custodian itself is both the defendant and the claimant, the matter must be exclusively brought before the competent judicial authority in Amsterdam. Furthermore, it is specified that neither the custody-representative nor the custodian is bound or obligated by any Tribunal decision that conflicts with their claims and privileges as outlined in the agreement. In relation to disputes concerning the provisions of the agreement and other matters of its implementation—where such disputes arise solely from cases initiated by one of the parties and before a single court or the Tribunal—the parties explicitly waive any immunity they may have or any right to invoke such immunity in civil proceedings. Moreover, the disputing parties agree to abide by the judgment and ruling of the Dutch court or, in cases not involving the custodian itself, to accept the decision of the Tribunal.

obligations by failing to maintain the security account balance at a minimum of $500 million. In their final pleadings, the claimants requested that the Tribunal order the respondents to restore the security account to the specified amount and maintain it at that level until all judgments against Iran were satisfied.[1] Additionally, the claimants sought permission from the Tribunal to execute all judgments against them in favor of Iran, by depositing the amounts of those judgments into the security account, should the respondents fail to restore the balance.[2]

Iran rejected these claims, denying any responsibility and asserting that the current balance of the security account was sufficient to satisfy all future judgments against Iran, thus it did not consider itself obligated to restore the account to $500 million.[3]

In its ruling, the Tribunal noted that the balance of the security account had repeatedly fallen below $500 million and that the respondents had restored the balance over several years. Furthermore, after the payment of several judgments amounting to significant sums on November 5, 1992, and the account balance falling to approximately $254 million, the account had not been restored.[4] After hearing the parties' claims and examining them, the Tribunal ruled against Iran's interpretation of Paragraph 7 of the Accords. The Tribunal expressed its expectation that Iran would fulfill its obligations and evaluated the commitments of the parties under the Accords and agreements as clear and unambiguous (at least in relation to the present dispute).[5] The Tribunal rejected all of Iran's differing interpretations of Paragraph 7 of the Algiers Accords, including the narrow interpretation of treaties,[6] reference to the historical context of the negotiations of Paragraph 7,[7] fundamental changes in circumstances,[8] and the doctrine of approximate performance of obligations.[9]

Consequently, the Tribunal found Iran at fault for failing to restore the security account and deemed this a failure to fulfill the obligations under Paragraph 7 of the Algiers Accords.[10] However, the Tribunal acknowledged the commitment made by Iran's representative during the hearing and considered it valuable, yet expressed uncertainty regarding Iran's decision not to restore the security account balance.[11] On the other hand, the Tribunal stated that although Iran had not correctly interpreted Paragraph 7 and failed to comply with its obligations under it, it could not assume that Iran would continue to neglect its commitments in the future. Therefore, the Tribunal's decision included two final clauses, stipulating that, first, under Paragraph 7 of the Algiers Accords, whenever the balance of the security account fell below $500 million, Iran must immediately restore it until the President of the Tribunal certifies to the Central Bank of Algeria that all judgments against Iran have been executed. Second, it noted that Iran had not fulfilled its obligations since late 1992, and the Tribunal expected Iran to comply with its commitments. Consequently, based on these considerations, the United States' request for an

1 IUSCT, *Award No 130, Case No A28* (19 December 2000), para 1.
2 Ibid.
3 IUSCT, *Award No. 130*, Op. Cit, para. 5.
4 Ibid, Para. 29.
5 Ibid, Para. 67.
6 Ibid, Paras. 67-68.
7 Ibid, Para. 70.
8 Ibid, Para. 74.
9 Ibid, Para. 85.
10 Ibid, Para. 88.
11 Ibid, Para. 90.

order compelling Iran to restore the security account balance and additional claims [given the Tribunal's statement that it could not be certain of the continued violation of Iran's obligations] was also denied.[1]

In September 2004, another case with the same subject matter as *A/28* and a similar request to the previous ruling was filed, classified as *A/32*. The United States reiterated its request for Iran to deposit $500 million into the security account, relying on the final section of the *A/28* ruling, and additionally sought $100,000 for damages incurred in relation to the *A/28* case, as well as a request to suspend proceedings until the account was restored.[2]

Iran, while rejecting the alleged responsibility, considered the claim an unauthorized attempt to reintroduce a matter that the Tribunal had previously decided in case *A/28*, thus invoking the principle of res judicata.[3] The United States asserted that Iran's continuous failure to restore the security account balance to the stipulated amount of $500 million, despite the absence of a certificate from the President of the Tribunal confirming the payment of all judgments against Iran, constituted a repeated and ongoing violation of Article 7 of the General Declaration. This conduct was seen as a clear contradiction to the Tribunal's findings regarding the necessity of restoring the account balance, and the explicit expectations set forth by the Tribunal.[4]

The United States emphasized that there was no reasonable basis for expecting Iran to comply with its obligations under Article 7 unless the Tribunal issued an order directing Iran to do so, which was the reason for bringing this case.[5] In response, Iran raised the issue of res judicata regarding this case, citing its similarity to case *A/28*.[6] Iran argued that the dispositif of the decision in case *A/28*, specifically the last sentence of Section 2 of Paragraph 95,[7] indicated that the Tribunal had rejected the order for restoration and the additional request in that case, rendering the decision final and enforceable. Consequently, the Tribunal was barred from reconsidering the matter and granting the request of the United States in the current case based on res judicata.[8]

Iran reiterated this argument by referencing Paragraph 1 of Article 4 of the Claims Settlement Declaration,[9] emphasizing that there was no jurisdictional basis for such a review in the Algiers Accords. The United States had merely based its new claim in case *A/33* on the existing dispute in case *A/28*.[10]

Furthermore, Iran stated that following the issuance of Award in case *A/28*, the United States filed a request on August 29, 2001, titled "Request of the United States for an Order

1 Ibid, Para. 95 (A) & (B).
2 IUSCT, *Decision No 132-A33-FT, Case No A32* (9 September 2004), para 3.
3 Ibid, Para. 4.
4 Ibid, Para. 10.
5 Ibid, Para. 11.
6 Ibid, Para. 14.
7 IUSCT, *Award No. 130*, Op. Cit, Para. 95: "
In view of the foregoing, THE TRIBUNAL DECIDES AS FOLLOWS:
A. Paragraph 7 of the General Declaration requires that Iran replenish the Security Account promptly whenever it falls below the level of U.S.$500 million until such time as the President of the Tribunal has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied.
B. Iran has been in non-compliance with this obligation since late 1992. The Tribunal expects that Iran will comply with this obligation. Consequently, the requests by the United States for an order to Iran for replenishment and for additional relief are denied."
8 IUSCT, *Decision No. 132-A33-FT*, Op. Cit, Para. 15.
9 All decisions and awards of the Tribunal shall be final and binding.
10 IUSCT, *Decision No. 132-A33-FT*, Op. Cit, Para. 19.

that Iran Replenish the Security Account," which the Tribunal had denied.[1] Iran contended that after a final judgment is issued, the Tribunal can only interpret, correct minor errors in the judgment based on Articles 35 to 37 of the Tribunal's rules,[2] or issue an additional ruling under certain conditions. Each party is afforded thirty days to request such matters from the Tribunal, which had not occurred in case *A/28*.[3] Iran viewed the United States' request as unauthorized regarding the enforcement of the Award in case *A/28*.[4]

In its ruling, the Tribunal disagreed with Iran's position that the current claim was identical to the one raised by the United States in case *A/28*.[5] According to the Tribunal, contrary to Iran's assertion, the dispositif of the ruling in case *A/28* did not solely pertain to subsection B of Paragraph 95, which rejected the United States' request for an order directing Iran to restore the security account and the additional request. Instead, the *dispositif* or the *operative part* of the decision encompassed all of the Tribunal's opinions expressed in Paragraph 95, not just the last nineteen words of the last sentence of subsection B, as claimed by Iran.[6]

The Tribunal reasoned that the dispositif of the ruling in case A/28 explicitly stated Iran's obligations under Article 7 of the General Declaration, specifically declaring that Iran is obligated to "immediately restore the security account whenever it falls below $500 million..." Furthermore, in the second clause of Paragraph 95, it was noted that "Iran has not complied with this obligation since late 1992." Based on these two opinions, the Tribunal expressed that it "expects that Iran will comply with this obligation" which was the basis for rejecting the United States' request.[7]

The Tribunal regarded all these opinions as part of the dispositif of the decision issued in case *A/28*, asserting that they were subject to res judicata and thus binding and enforceable for both parties.[8]

The Tribunal confirmed the principle now stated in Article 14(2) of the International Law

1 IUSCT, *Decision No. 132-A33-FT*, Op. Cit, Para. 16.

2 ARTICLE 35: INTERPRETATION OF THE AWARD:

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral Tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 32, paragraphs 2 to 7, shall apply.

ARTICLE 36: CORRECTION OF THE AWARD:

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral Tribunal may within thirty days after the communication of the award make such corrections on its own initiative.
2. Such corrections shall be in writing, and the provisions of article 32, paragraphs 2 to 7, shall apply.

ARTICLE 37: ADDITIONAL AWARD:

3. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
4. If the arbitral Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.

3. When an additional award is made, the provisions of article 32, paragraphs 2 to 7, shall apply.

3 IUSCT, *Decision No. 132-A33-FT*, Op. Cit, paras. 19-20.

4 Ibid, Para. 21.

5 Ibid, Para. 26.

6 IUSCT, *Decision No. 132-A33-FT*, Op. Cit, para. 27.

7 Ibid, Paras. 28-32.

8 Ibid, Para. 28.

Commission's Draft Articles on the Responsibility of States,[1] indicating that the situation in the current case is the same. Iran remains in breach of its obligation under Article 7 until it places the agreed-upon $500 million in the security account and until the President of the Tribunal certifies that all arbitral awards against Iran have been executed. Therefore, the Tribunal classified Iran's non-compliance as a continuous breach of obligation.[2]

According to the Tribunal, "the United States has the right to bring a new claim based on Iran's failure to comply with its obligations under Article 7 since December 2000 and to request that this non-compliance be addressed."[3] Hence, Iran's argument regarding the res judicata was dismissed.[4]

Ultimately, the Tribunal requested that Iran "fulfill its obligation to restore the security account, as determined in the Tribunal's decision in case *A/28*." The United States' requests, which included a) suspending proceedings regarding ongoing cases against Iran until the execution of Paragraph 11 of the aforementioned obligation and b) payment of arbitration costs incurred in case *A/28* by Iran, were denied.[5]

2.1.1. The Security Account Case: Continuation of Breach of Obligation and Res Judicata

It appears that the Tribunal, in its decision regarding case *A/28*, correctly noted that it could not foresee the non-compliance with obligations by Iran, after clarifying the discrepancy in interpreting the statement, especially since the tribunal had settled the interpretative conflict entirely. Consequently, the Tribunal rejected the United States' request. In this context, the ICJ similarly argued in 2002 in the case of Land and Maritime Boundary between *Cameroon* and *Nigeria*. In that case, Cameroon requested not only the cessation of Nigeria's administrative and military presence in the disputed territory but also sought guarantees against future occurrences. The Court reasoned that since the present ruling would definitively and mandatorily establish the land and maritime boundaries between the parties, it would resolve any existing dispute. Thus, the Court could not predict a scenario in which either party would fail to respect the territorial sovereignty of the other after withdrawing police and military forces, leading to the rejection of Cameroon's request.[6]

In the case *A/33*, which, in the author's view, posed perhaps the most significant challenge to the Tribunal regarding the issue of res judicata, it seems that the Tribunal could have simply rejected the United States' request based on the existence of the res judicata rule by conducting a triple identity test.

The Tribunal, in a way, resisted applying res judicata in case *A/33*, making it appear that their stance on this principle was stringent and set at a very high threshold. The significance of this case lies in the fact that these two discussed cases were perhaps the best and closest examples

1 The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.
2 IUSCT, *Decision No. 132-A33-FT*, Op. Cit, Para. 33.
3 Ibid, Para. 35.
4 Ibid, Paras. 35-36.
5 Ibid, Para. 45.
6 ICJ, *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea Intervening)* (Judgment, 10 October 2002) para 318.

to the principle of res judicata. As noted, the Tribunal could have acknowledged the identity of the parties, the subject matter, and the cause of action. Considering the ICJ's perspective in the "Haya de la Torre" case,[1] the Tribunal might have accepted the res judicata claim regarding case *A/33* and refrained from examining it. However, by emphasizing the role of time in the claimant's assertion, the Tribunal regarded time as a factor in assessing the existence of res judicata. Consequently, a majority of the Tribunal's judges did not consider the cause of the current case to be identical to that of the previous case and opted for a renewed examination.

In fact, it must be stated that the Tribunal's approach in this case was such that the continuous breach of an obligation allows the opposing party to assert this breach at any time. It is noteworthy that the Tribunal in case *A/28* merely requested Iran to adhere to its obligations. Although it appears that the ruling was ineffective, it was nonetheless binding and final, with no basis for reconsideration. Initially, it seems that the Tribunal attempted to incorporate the element of time into the cause of action, striving to revisit its ruling from case *A/28*. However, the majority of the judges, even after that, added nothing to what had been stated in the previous ruling, and it can be argued that the outcomes of both rulings were entirely the same, thereby reinforcing the assertion of the identity of cases *A/28* and *A/33*. The Tribunal's approach suggested that a breach of an obligation might be continuous, and in the event of such continuity, the possibility of distinguishing breaches of obligations over different time periods and indefinitely exists. This, of course, appears to contradict the fundamental philosophy underlying the issue of res judicata.

2.2. Expanding the Concept of Res Judicata in the Case of Iranian Tangible Military Properties Held by Third Parties

Another significant case related to res judicata in the Tribunal's jurisprudence is the case known as *B/61*. The dispute revolved around the claims of Iran for compensation from the United States for damages incurred due to the United States' refusal to issue export licenses for certain assets that, according to Iran, belonged to it at the time the Algiers Accords were formalized on January 19, 1981, and that were located in the United States or otherwise subject to U.S. jurisdiction.[2]

In this stage of the proceedings, which included the issuance of two prior partial rulings[3] by the Tribunal in this matter, the United States raised a claim denying the previous rulings, while Iran considered these rulings to fall under the scope of res judicata.

In the beginning of its ruling, the Tribunal addressed whether the decision in the relevant paragraphs of Partial Ruling No. *A/15* (II: A and II: B),[4] which implied an obligation for the

1 *Haya de la Torre Case (Colombia v Peru), Merits, Judgment [1951] ICJ Rep 71, ICGJ 191 (ICJ 1951), 13 June 1951, International Court of Justice, p 71, para 82; Asylum Case (Colombia v Peru), Merits, Judgment [1950] ICJ Rep 266, ICGJ 194 (ICJ 1950), 20 November 1950, para 266.*

2 IUSCT, *Award No 601, Cases No A3, A8, A9, A14, A21 & B61, Doc No 916* (Partial Award, July 2009), paras 4-7.

3 Partial Award No. A/15 (II: A and II: B) and Case No. B/1 (Claim 4) established, for the first time in the latter case, the existence of an implicit obligation to compensate for the failure to export military property. See: IUSCT, *Award No. 382-B1-FT, Case No. B1* (Claim 4, August 1988), Para. 66.

4 The Tribunal ruled in these awards: " United States Treasury Regulations that excluded from the transfer direction properties which were owned solely by Iran but as to which Iran's right to possession was contested by the holders of such properties on the basis of any liens, defences, counterclaims, set-offs or similar reasons, were inconsistent with the obligations of the United States under the General Declaration. The Tribunal is not on the present record in a position to determine the relevant facts with respect to any particular property." Furthermore, " The United States has an implicit obligation under the General Declaration to compensate Iran for losses it incurs as a result of the refusal by the United States to permit exports of Iranian properties subject to United States export control laws applicable prior to 14 November

United States to compensate Iran for losses it incurs as a result of the refusal by the United States to licence exports of Iranian properties to export its properties subject to United States export-control laws applicable prior to 14 November 1979, holds res judicata effect concerning the proceedings in case B/61.[1]

The Tribunal initially described the principle of res judicata as a widely accepted legal principle among civilized nations,[2] emphasizing that it is not only broadly recognized in domestic legal systems but also a well-established rule in international law. The Tribunal referenced this principle in the Claims Settlement Declaration, particularly in Article 4(1) of the Declaration[3] and Article 32(2) of the Tribunal's Rules,[4] asserting that it is applicable only where the parties and the disputed claim are identical. The Tribunal further differentiated the second element into two parts: the subject matter and the cause of action, effectively identifying three customary elements for the identity of claims (or the *triple identity test*).[5]

Continuing, the Tribunal noted that res judicata does not need to encompass all aspects of a decision. In an innovative approach compared to other tribunals, it stated that, in addition to the operative part (dispositif) of a decision, the reasons (motifs) provided in a decision would also have res judicata effect as long as they relate to the disputed subject matter.[6] The Tribunal articulated, "In the view of the Court if any question arises as to the scope of res judicata attaching to a judgment, it must be determined in each case having regard to the context in which the judgment was given... ."[7]

Citing the ICJ, the Tribunal added, "In respect of a particular judgment, it may be necessary to distinguish between, first, the issues which have been decided with the force of res judicata, or which are necessarily entailed in the decision of those issues; secondly any peripheral or subsidiary matters, or obiter dicta; and finally matters which have not been ruled upon at all.... If a matter has not, in fact, been determined, expressly or by necessary implication, then no force of res judicata attaches to it, and a general finding may have to be read in context in order to ascertain whether a particular matter is or is not contained in it."[8]

Regarding the justification of the relevant prudence for the principle of res judicata, the Tribunal aligned its approach with the ICJ's reasoning in the dispute between *Bosnia and Herzegovina* and *Serbia* over the "Application of the Convention on the Prevention and Punishment of the Crime of Genocide," characterizing it as having both public and private natures.[9] In that case, the ICJ indicated that the principle of res judicata serves two purposes: one general and the other specific. The public nature emphasizes that first, the stability of legal relations necessitates the conclusion of disputes, and second, it is beneficial for any party to the

1979." Additionally, " The Respondent, THE UNITED STATES OF AMERICA, is not obligated by the General Declaration to compensate the Claimant, THE ISLAMIC REPUBLIC OF IRAN, for any storage charges, depreciation or other losses incurred with respect to Iranian properties prior to 19 January 1981." See: IUSCT, *Award No. 529-A15(II: A and II: B)-FT*, Op. Cit, Para. 77.

1 IUSCT, *Award No. 601*, Op. Cit, Para. 113.

2 Ibid, at Para. 114.

3 Article IV: 1. All decisions and awards of the Tribunal shall be final and binding.

4 IUSCT, TRIBUNAL RULES OF PROCEDURE (3 May 1983): ARTICLE 32: FORM AND EFFECT OF AWARD: … 2. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.

5 IUSCT, *Award No. 601*, Op. Cit, Para. 114.

6 The Tribunal referenced Case A/33, Decision No. 132 of the General Assembly dated 9 September 2004, where the same issue was affirmed.

7 ICJ,Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (26 February 2007) ICJ, para 125; Award No 601 (Op. cit) para. 115.

8 ICJ, Bosnia and Herzegovina v. Serbia and Montenegro, Op. Cit, Para. 126 IN Award No. 601, Op. Cit, Para. 115.

9 IUSCT, *Award No. 601*, Op. Cit, Para. 115.

dispute that the matter previously adjudicated in its favor should not be reopened for argument. Furthermore, according to the Tribunal, depriving a party of the benefit of a judgment previously obtained should generally be considered a violation of the principles governing the resolution of legal disputes.[1]

Continuing with the specific facts of the present case, the Tribunal stated that it could not agree with the United States' argument that the implicit obligation established by the Tribunal in case *A/15* (*II: A and II: B*) cannot have res judicata effect.[2] The Tribunal also rejected the United States' argument that the decisions in question were contained in an interim ruling rather than a final judgment, and thus do not fall under res judicata.[3] The Tribunal opined that the fact that the Tribunal's decision is expressed in a Partial Award does not preclude the establishment of res judicata.[4] What matters is whether the Tribunal's determination regarding the existence of an implicit obligation definitively resolves the matter between Iran and the United States, irrespective of whether the decision was rendered as a partial award or final decision.[5]

The Tribunal acknowledged that a partial award may not address all the subjects of the disputes in the case, but the issues it does decide are conclusively determined, not temporarily. A partial award, although it is partial, is considered a "judgment" under Articles 1, 4(1), and 4(3) of the Claims Settlement Declaration and Article 2 of the Tribunal's Rules and, therefore, any partial award is final and binding on the parties.[6]

The tribunal, considering the evidence presented by the parties, observed that the United States appeared to have defined the principle of res judicata in a narrow manner, asserting that the cases numbered *A/15* (II: A and II: B) and *B/61* pertained to different claims and assets, thus not falling under the principle of res judicata. Conversely, Iran adopted a broader interpretation, arguing that since both cases *A/15* (II: A and II: B) and B/61 involved "exactly one type of asset subject to export laws," the principle should apply.[7]

The Tribunal then examined whether the principle of res judicata requires that the assets in question be precisely the same across the cases or if it suffices that both cases relate to the same type or category of assets for the purpose of establishing res judicata.[8]

In response to this question, the Tribunal initially posed a general inquiry: whether the exact sameness of the subject matter of a claim is necessary for the application of res judicata in international law. The Tribunal concluded that, depending on the specific circumstances of a case, there could be varying interpretations of the principle that do not necessitate exact sameness of the subject matter of the claims.[9]

As a supplement to its response, the Tribunal referred to a precedent from the United States, cited during a hearing on general issues related to the current case. In that instance, The WTO Panel opined that the applicability of res judicata in dispute settlement would only arise if

1 ICJ, *Bosnia and Herzegovina v. Serbia and Montenegro*, Op. Cit, Para. 116 IN *Award No. 601*, Op. Cit, Para. 116.
2 IUSCT, *Award No. 601*, Op. Cit, Para. 117.
3 Ibid.
4 Ibid.
5 Ibid, Para. 117.
6 Ibid.
7 Ibid, Para. 118.
8 Ibid.
9 Ibid, Para. 119.

the basis of the current dispute closely mirrored that of a previous case, in line with accepted interpretations of the doctrine. It further emphasized that for res judicata to be relevant, there must be a substantial identity between the issues previously ruled on and those presented in the current case. In this instance, the Panel concluded that the two matters were not identical, as the specific measures in question were not considered in the prior case.[1]

The Tribunal noted that, for res judicata to apply to a claim, there must be at least a substantive similarity between the matter previously adjudicated and the matter referred to the subsequent authority. The Panel concluded that the two issues were not the same, as neither the specific actions in the current case nor similar actions at the time of the establishment of that authority had been explicitly examined in the previous case.[2] Furthermore, the Tribunal recalled that some legal scholars maintain that the principle of res judicata pertains to actions that are generally similar, rather than requiring exact sameness of the conflicting subjects.[3]

The Tribunal emphasized that some international Tribunals have referenced the principle of res judicata in broader terms.[4] For instance, in a dispute before ICSID involving Mexico,[5] the center stated, "A judicial

decision is only res judicata if it is between the same parties and concerns the same question as that previously decided."[6] The arbitral board, citing the Franco-Venezuelan Mixed Cl. Commission, noted that a right, subject, or fact that has explicitly been examined by a competent court and directly ruled upon as the basis for compensation could not be contested."[7] Additionally, in a dispute before the Tribunal of claims between the United States and Great Britain, the Tribunal stated that the principle of res judicata applies where the parties and the subject matter of the dispute are the same.[8]

The Tribunal acknowledged that the concept of res judicata in international law may be broader than in some domestic jurisdictions, asserting that the appropriate criterion for determining the applicability of the principle is the identity of the parties as well as the identities of the subject matter and cause of action, as previously mentioned.[9]

The Tribunal declared that the necessity for exact sameness in the subject matter of the dispute depends on the scope of the prior findings on the Decision in question. It indicated that the Tribunal must revisit previous cases to precisely define the scope of its decision regarding the existence of an implicit obligation in case *A/15* (*II: A*) within the context of the dispute presented by the parties.[10] Following the precedent of the ICJ in the case of "Haya de la Torre,"[11] after examining the claims and submissions of the parties,[12] the Tribunal established the scope

1 India/Measures Affecting the Automotive Sector (Complaints by the European Communities and the United States, WT/DS146/R and WT/DS175/R), report of the Panel, para. 7.60 (21 Dec. 2001) IN IUSCT, *Award No.601*, Op. Cit, Para. 119.
2 IUSCT, *Award No.601*, Op. Cit, Para. 79.
3 IUSCT, *Award No. 601*, Op. Cit, Para 119 et seq.
4 Ibid.
5 *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3 (26 June 2002).
6 Ibid, at Para. 39.
7 Franco-Venezuelan Mixed Cl. Comm., Compagnie Générale de l'Orénoque, 1905. REPRINTED IN Ralston, Jackson Harvey. Report of French-Venezuelan Mixed Claims Commission of 1902. No. 533. US Government Printing Office, 1906, pp. 244-355.
8 American-British Claims Tribunal, reprinted in 16 Reports of International Arbitral Awards 323, 324 (1922).
9 IUSCT, *Award No. 601*, Op. Cit, Para. 120.
10 Ibid, Para. 120.
11 ICJ, *Haya de la torre*, Op. Cit, para 79 & 80.
12 In the proceedings of Case No. A/15 (2:A), Iran claimed that the United States, by failing to facilitate the immediate transfer of all Iranian

of its decisions and referred to its rulings in the two decisions of case *A/15* (II: A and II: B). It subsequently clarified that the ruling given in that case was declaratory and somewhat abstract, pertaining to an interpretative issue of the public statement, without addressing the specific matters relating to each of the assets involved in the relevant contracts between Iran and private U.S. companies. Consequently, the Tribunal stated that the ruling made in case *A/15* (II: A and II: B), which recognized the implicit obligation of the United States,[1] retains res judicata effect in the present case (numbered *B/61*).[2]

The Tribunal further drew attention to another claim by the United States regarding the existence of a "manifest error of law" in the Tribunal's previous ruling and its effect on the inapplicability of the principle of res judicata. In this regard, it clarified that "No *res judicata* effect attaches to a decision by a competent court or tribunal when that decision is the result of a manifest error of law."[3] According to the Tribunal, the scope of this exception to the principle of res judicata is rather narrow "because the commission of "mere" or "other" errors of law is not sufficient to deny the final and binding effect of decisions."[4] The Tribunal referenced the opinion of a U.S.-Canadian Arbitration Tribunal case, which stated that the correct rule does not lie in distinguishing between essential errors of law and other such errors but rather in "manifest" errors, including situations where a Tribunal ignores a relevant treaty or bases its decision on an agreement that the parties admit has been terminated, or other similar errors of law.[5] The Tribunal found that the error in interpreting a treaty, which the claimant argued warranted a revision, was not a "manifest" error.[6] Ultimately, the Tribunal concluded that even if the criticisms were justified, they would not constitute grounds for overturning the decision.[7]

The Tribunal found this narrow approach consistent with the rationale underlying the principle of *res judicata*, which is to provide an end to disputes. It added that the cases falling within the scope of this exception to *res judicata* are those where the Tribunal has ignored a relevant treaty or has based its ruling on an agreement that the parties acknowledge has been terminated. According to the Tribunal, "What these examples have in common is that the error of law is incapable of rebuttal by the opposing party and not subject to different interpretations. Merely disagreeing with a tribunal's interpretation or construction of a treaty or other legal document does not qualify as a "manifest error of law."[8] Therefore, the Tribunal did not consider its decision to fall under the issue of manifest error of law and thus regarded its previous Partial Award as subject to *res judicata*.[9]

tangible assets located within its jurisdiction, or alternatively, by not compensating Iran for its refusal to arrange the transfer of these assets, had violated its obligations under the Algiers Accords. Iran sought a declaratory judgment to establish this breach, requiring the United States to make the necessary arrangements for the transfer of those Iranian assets that had not yet been transferred, and also obligating the United States to compensate for all direct and indirect damages claimed by Iran as a result of this breach, with the amount of damages to be determined in subsequent proceedings.

1 Hamid Reza Aloumi Yazdi, 'Establishing Implicit Obligations in International Treaties: Revisiting Two Awards of the Iran-United States Claims Tribunal, Award in Case B/1 (Claim 4) and Award in Case A/15 (2-A)' (2011) 13 *Public Law Research* 197.

2 IUSCT, *Award No. 601*, Op. Cit, Paras 123-125.

3 Ibid, Paras. 126-7.

4 Ibid, Para. 127.

5 *Trail Smelter Case (United States v Canada)*, 16 April 1938 and 11 March 1941, in UN, Reports of International Arbitral Awards, Recueil des Sentences Arbitrales, vol III, pp 1905-1982, pp 1956-1957. IUSCT, *Award No 601* (Op. cit) paras 125-127 et seq.

6 IUSCT, Award No. 601, Op. Cit, Paras. 125-127 et seq.

7 Ibid.

8 Ibid, Para. 127.

9 Ibid, Para. 128.

Regarding the United States' position on the insufficiency of discussion and argument, the Tribunal determined that the issue is not whether the matter of the implicit obligation was fully discussed in case No. *A/15* (2:a) but rather whether the matter was raised at all and, if it was, whether the parties had a full opportunity to present all the arguments they wished to make.[1] The Tribunal also cited Judge Mohamed Shahabuddeen, a former judge of the ICJ, who stated, "It is clear that where an issue has been raised, the Court may competently consider all pertinent arguments and authorities, even if not presented by the parties."[2] Consequently, the Tribunal concluded that as long as the issue was raised and the parties had the opportunity to present their evidence regarding it, there was no need for the Tribunal to determine how much of the written submissions or oral arguments of the parties in the discussed cases were dedicated to the issue of the implicit obligation.[3]

The Tribunal reiterated that its jurisdiction is based on the consent of the parties and that it only issues rulings on the referred matters and nothing more. At the same time, it clarified that it is not limited to the legal arguments presented by the parties; the issue of the United States' implicit obligation to pay compensation had been fully raised and examined previously, and the United States' claim is inadmissible and cannot serve as grounds for an exception to *res judicata*.[4] In another argument, referring to Articles 15[5] and 29[6] of the Tribunal's procedure rules, the assumption that the United States was deprived of an adequate opportunity to present its evidence regarding the implied obligation was rejected. The fact that the United States is dissatisfied with the outcome of the ruling in case No. *A/15* (II: A and II: B) cannot provide grounds for accepting the United States' claim.[7]

1 Ibid, Para. 129.

2 Mohamed Shahabuddeen, *Precedent in the World Court* (Vol 13, Cambridge University Press 2007) 140, IN *Award No. 601*, Op. Cit, Para. 129.

3 IUSCT, *Award No. 601*, op. cit., Para.129.

4 Ibid, Para. 130.

5 ARTICLE 15: GENERAL PROVISIONS

1. Subject to these Rules, the arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.
2. If either party so requests at any stage of the proceedings, the arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
3. All documents or information supplied to the arbitral Tribunal by one party shall at the same time be communicated by that party to the other party.

Notes to Article 15

1. 1As used in Article 15, the terms "party" and "parties If mean the arbitrating party or parties, as the case may be.
2. In applying paragraph 2 of Article 15, the arbitral Tribunal shall determine without hearing any written requests or objections of the concerned arbitrating parties with respect to procedural matters unless it grants or invites oral argument in special circumstances.
3. In complying with paragraph 3 of Article 15, an arbitrating party shall follow the procedures set forth in Article 2 of the Tribunal Rules.
4. The arbitral Tribunal may make an order directing the arbitrating parties to appear for a pre-hearing conference. The pre-hearing conference will normally' be held only after the Statement of Defense in the case has been received. The order will state the matters to be considered at the pre-hearing conference.
5. The arbitral Tribunal may, having satisfied itself that the statement of one of the two Governments - or, under special circumstances, any other person - who is not an arbitrating party in a particular case is likely to assist the Tribunal in carrying out its task, permit such Government or person to assist the Tribunal by presenting oral or written statements.

6 Article 29: 1. The arbitral Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

7 IUSCT, *Award No. 601*, Op. Cit, para. 131.

Ultimately, the Tribunal found that the dispositif of the partial ruling in case No. *A/15* (II: A and II: B)[1] is subject to *res judicata* and, moreover, that the reasons leading the court to establish their conclusion and operative parts (dispositif) have *res judicata* effect.[2] It ruled that "the United States has an implicit obligation to compensate Iran for any losses it incurs as a result of the lawful refusal by the United States to permit exports of Iranian properties subject to United States export-control laws applicable prior to 14 November 1979. This determination by the Tribunal has res judicata effect in the present Case No. *B61*"[3]

2.2.1. *B/61*: A Case for Res Judicata

The majority, in contrast to the previously established jurisprudence of the Tribunal, including what was observed in case *A/33* regarding the ruling in case *A/28*, acknowledged that the appropriate criterion for determining the applicability of the doctrine of res judicata to a dispute is the presence of three elements: identity of the parties, identity of the subject matter, and identity of the cause of action. Regarding the claim that there was a difference in the causes of action due to the fact that the assets in question were not "entirely" identical, the Tribunal stated that, apart from the specific circumstances in each case, there is no requirement for the exact identity of the subject matter of the claims. The Tribunal further added that res judicata could apply to actions that are generally similar, and, compared to what has been seen in the Tribunal's previous jurisprudence, it adopted a lenient approach towards the issue of res judicata, thereby expanding its scope.

However, it is important to note that this occurred while the Tribunal ultimately, after reaffirming the existence of the United States' implicit obligation to pay compensation to Iran, curiously denied[4] the existence of any such obligation and ultimately dismissed all of Iran's claims without addressing their merits. This expansion of the concept of *res judicata* at this juncture and in this case, in relation to the mentioned issues, may have been unnecessary.[5]

In this case, which contains one of the most notable and interesting opinions regarding the reasons (motifs), the Tribunal deemed all motifs related to the dispositif of the judgment to be subject to res judicata, thereby expanding the principle of *res judicata*'s scope. Until that point, this issue had not been articulated in international law, and the Tribunal was pioneering in this regard. Generally, other arbitration bodies do not consider facts to be subject to *res judicata*. In a ruling issued by the Permanent Court of Arbitration in 1977, concerning the delimitation of the continental shelf between the United Kingdom and France, the body restricted the application of res judicata solely to the dispositif of the judgment itself and not to the reasoning and related facts, viewing the latter merely as tools for potential future interpretation of the ruling.[6]

Nonetheless, this perspective of the Tribunal was later endorsed by some international arbitration bodies, such as ICSID. In the ruling known as Apotex, a Canadian company named Apotex filed a complaint against the U.S. government based on the North American Free Trade

1 IUSCT, *Award No. 529-A15(II: A and II: B)-FT*, Op. Cit, Para. 77.
2 IUSCT, *Award No. 601*, Op. Cit, para. 133.
3 Ibid, Para. 183(A).
4 Ibid, Paras. 134-183
5 Michael Ottolenghi, 'A14, and B61 Islamic Republic of Iran v United States: Case Nos A3, A8, A9, Iran-US Claims Tribunal Partial Award Concerning US Duty, Under Algiers Accords, to Compensate Iran for Blocking Exports of Property' (2010) 104 *American Journal of International Law* 474-480.
6 *Decision of the PCA between the United Kingdom and France* (14 March 1978) (2006) XVIII Reports of International Arbitral Awards 295.

Agreement (NAFTA) at ICSID. The United States, as a party to the dispute, raised objections regarding the jurisdiction of the Tribunal and the applicability of res judicata to this claim, arguing that it was similar to a previous ruling between the said company and the United States under the arbitration rules of NAFTA and UNCITRAL.[1] Initially, the Tribunal stated that the rulings issued under NAFTA were subject to res judicata and, in addition, referenced the triple identity test proposed by Judge Anzilotti in his dissenting opinion in the *Chorzow Factory* case. After reviewing international jurisprudence, it concluded that the scope of *res judicata* is broad and, in a similar opinion to that of the Tribunal, asserted that, in addition to the dispositif of the ruling, all evidence and what is recognized as the reasons and facts presented in the judgment are also subject to res judicata.[2]

It appears that the Tribunal has erred both in its reliance on the principle of res judicata and in its application of it in this case. Assuming the correctness of the majority's findings regarding the nature of the dispute, when the majority determined that the assets in Case *B/61* are not identical to those in Case *A/15* (subsections 2: a and 2: b), it seems that the Tribunal's reasoning regarding the absence of a requirement for the exact identity of the assets in question raises doubts. This issue prevents the successful application of the tripartite test related to res judicata as proposed by Judge Anzilotti. In fact, the Tribunal downplayed the significance of the triple identity test and did not apply it as it ought to have.

The critical issue is the dissimilarity of the causes of action (even assuming they may share some common aspects) in these two disputes.[3] The fact that the Tribunal derived its conclusion about the "exact identity of the assets in question" from a peripheral perspective offered by a judge in a dispute resolution body within the WTO is, firstly, an ambiguous and debatable matter, and secondly, it constitutes a clear deviation from the acceptance of established principles in international law and the aforementioned tripartite test.[4] It appears that the assertion that the characteristics of the assets in the *A/15* cases (subsections 2: a and 2: b) are fundamentally not identical is entirely valid.

Therefore, it seems that the Court has not correctly utilized the principle of res judicata to bar the re-litigation of its previous precedents.[5] The majority's modification of the tripartite test for res judicata to align it with the circumstances of this case contradicts the policies that the Tribunal cited from the ICJ, which emphasized the finality of legal disputes and the enhancement of judicial efficiency. The expansion of the concept of cause of action in light of the existing circumstances does not serve to advance these goals nor does it facilitate their proper implementation; it merely extends the scope of the cause of action as one of the three essential elements necessary to establish the existence of res judicata.

The claims presented do not, in fact, possess the requisite similarity to fall under the purview of res judicata, and moreover, the subject matter of the disputes in these cases is distinctly

1 ICSID, *Apotex v United States*, ICSID Case No Arb(AF)/12/1 (25 August 2014), para. 2.53
2 Ibid, paras. 7.32, 7.42
3 Ottolenghi, Op. Cit. (2010)
4 Ibid.
5 "Citing Panel Report, India—Measures Affecting the Automotive Sector, WT/DS146/R &WT/DS175/R, para. 7.60 (adopted Apr. 2, 2002); Vaughan Lowe, Overlapping Jurisdiction in International Tribunals, 1999 AUSTL. Y.B. INT'L L. 191, 202; August Reinisch, The Use and Limits of Res Judicata and Lis Pendens as Procedural Tools to Avoid Conflicting Dispute Settlement Outcomes, in 3 THE LAW AND PRACTICE OF INTERNATIONAL COURTS AND TRIBUNALS 37, 71 (2004)" IN Ottolenghi, Op. Cit. (2010).

different. Consequently, the Tribunal should not have resorted to the issue of res judicata.[1] In this regard, the ICJ, in the *Genocide* case, emphasized that its ruling is final and not subject to appeal, determining that the scope of the res judicata rule is limited solely to the parties involved and "in relation to the particular case at hand," thus rejecting its extension to other disputes.[2]

The error committed by the majority lies in the fundamental lack of necessity to discuss the application of res judicata concerning previous claims. The straightforward reason for this is that the prior ruling is one issued by the Tribunal itself, and just as reliance on identical findings in one ruling is frequently observed in subsequent rulings of arbitration bodies such as ICSID, the findings of the Tribunal indeed hold value for the Tribunal itself, negating the need for re-examination. Interestingly, the majority itself acknowledged the previous rulings of the Tribunal as having "precedential value" and took that as a given.[3]

In reality, the majority could have simply reaffirmed its previous findings, considering them as conclusive and unappealable, and argued that in the matters discussed, the Tribunal had reached a satisfactory conclusion and saw no reason to reject or reconsider them.

Conclusion

Res judicata as a principle has been an internationally law-founded concept to which the Iran-United States Claims Tribunal has generally acknowledged in its decisional framework as per the governing structures of the Algiers Accords and the *UNCITRAL Model Law*. This study, based on the case jurisprudence of the Tribunal, however, reveals inconsistencies and dispersion within the enforcement approach of its applicability, leading to far-reaching ramifications for the conclusiveness and ascertainability of final determinations rendered.

The security account cases (*A/28* and *A/33*) demonstrate the manner in which the Tribunal, despite the prima facie identification of parties, subject matter, and cause of action, failed to apply the principle of res judicata simply due to differences in time frames. This basis deviates from conventional conceptions of the principle. Conversely, in the case of Iran's Tangible Assets in the United States (*B/61*), the Tribunal extended *res judicata* to not only the dispositif (operative decision) but also the motifs (reasoning and findings of fact), an expansion that significantly broadened the traditional limits of the principle in international law. This combined application—both elevating the threshold for res judicata while simultaneously expanding its application—has produced conclusions that are sometimes contradictory and, in some cases, have not been effectively implemented.

As case B/61 remains unresolved, the issue of res judicata will likely continue shaping the Tribunal's jurisprudence and introducing additional legal obstacles for Iran in both the IUSCT and other international proceedings. A consistent and dependable application of res judicata remains essential for ensuring legal certainty, finality of disputes, and the integrity of the Tribunal. Failure by the Tribunal to adopt a more systematic and precise approach risks undermining the stability of international arbitration, as well as the rights of the parties under its jurisdiction.

1 Ottolenghi, Op. Cit. (2010) 8.
2 ICJ, *Genocide Case*, Op. Cit, Para. 115.
3 IUSCT, *Award No. 601*, Op. Cit, Para. 113.

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

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ABSTRACT

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

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Introduction

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

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

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

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

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

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

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

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

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

1.1. The Concept of Appeal in International Law

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

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

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

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

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

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

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

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

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

1.2. The Necessity and Significance of Appeal in Arbitration

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

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

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

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

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

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

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

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

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

2. Identifying Instances of Appeal in Arbitration Agreements and Laws

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

2.1. Review of Arbitration Awards

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

2.1.1. Interpretation of the Award

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

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

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

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

2.1.2. Supplementation of the Award

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

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

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

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

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

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

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

2.1.3. Correction of Clerical Errors

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

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

2.2. Specific Instances of Appeal Based on Laws

2.2.1. Appeal in International Regulations

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

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

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

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

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

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

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

Otherwise, the right to appeal will be forfeited.

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

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

2.2.1. Appeal in the Domestic Laws of Certain Countries

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

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

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

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

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

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

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

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

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

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

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

2.4. Feasibility of Including Appeal Provisions in Arbitration Agreements

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

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

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

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

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

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

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

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

3.1. Instances of Appeal in Issued Awards

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

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

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

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

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

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

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

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

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

3.2. Identifying Appeal in the Arbitration Rules of the Tribunal

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

3.2.1. Current Arbitration Rules in the Tribunal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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Examination of the Mechanism Governing the Recognition and Enforcement of Awards Issued by the Iran-U.S. Claims Tribunal with Emphasis on the Applicability of the 1958 New York Convention

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ABSTRACT

The Iran-United States Claims Tribunal is an international body established based on agreements reached in the Algiers Accords, tasked with resolving legal disputes between the parties and their nationals. The Tribunal's contribution in reducing conflicts and the volume of cases handled demonstrates its effectiveness in peacefully settling disputes and implementing beneficial arbitration practices. However, controversies exist regarding the enforcement of the Tribunal's awards, particularly as paragraph 7 of the General Declaration stipulates the establishment of a Security Account by Iran to secure the enforcement of financial judgments against the country, while no specific provisions are made for other awards. This situation has led to Iran's objections regarding the absence of a similar mechanism for the enforcement of awards in its favor, deeming the recognition and enforcement framework of the New York Convention inadequate in this context. The present study aims to analyze the enforcement mechanism of the Tribunal's awards through a descriptive-analytical method, focusing on the applicability of the recognition and enforcement framework of the 1958 New York Convention. The central research question is: What mechanism governs the recognition and enforcement of awards issued in favor of Iranian parties? The fundamental hypothesis posits that, according to existing practices, the New York Convention is applicable to the enforcement of these awards. Research findings indicate that the New York Convention possesses the necessary capacity for the enforcement of the Tribunal's awards. Furthermore, the Tribunal's dual nature, addressing claims from two states as well as claims from nationals of one state against another, does not create an obstacle in this regard.

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Introduction

The objective of the parties involved in any dispute is to obtain a final and enforceable judgment through sometimes lengthy litigation processes. The issuance of a final judgment and its enforcement are directly related to the resolution of disputes and emphasize the inviolability of the legal rules governing individuals and states. Therefore, studying the enforcement of awards issued by any tribunal is significant when assessing the functionality and role of that tribunal in resolving disputes. In this context, the examination of the recognition and enforcement framework of awards, as well as their finality and binding nature, are pertinent topics.

The exploration of this subject concerning the awards issued by the Iran-United States Claims Tribunal (IUSCT, the Tribunal) is particularly challenging. In addition to the complexities arising from international disputes between states and between states and their nationals, the political transformations following the 1979-Islamic Revolution in Iran and the lack of friendly relations between the two countries may also affect the recognition and enforcement of the Tribunal's awards.

These complexities prompted the parties to provide for a special mechanism for the enforcement of awards issued in favor of American claimants in paragraph 7 of the General Declaration.[1] The measure taken seems commendable, considering the ease of enforcing these awards, as it allows the award creditor to execute the award without resorting to judicial authorities. However, a persistent issue that remains ambiguous and has provoked Iran's objections in various instances is the absence of a similar mechanism for the enforcement of awards rendered in favor of Iran. Consequently, in addition to the interpretations provided by various courts, Iran has requested the Tribunal to interpret the obligations of the United States regarding the enforcement of awards under the Algiers Accords[2] in cases such as A/21[3] and A/27.[4]

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1 All funds in the Security Account shall be utilized solely to guarantee the payment and settlement of claims against Iran as stipulated in the dispute resolution declaration. Whenever the Central Bank notifies Iran that the balance of the Security Account has fallen below $500 million, Iran shall promptly restore the account balance to $500 million by depositing additional funds. This balance shall be maintained at that level until the Chair of the Arbitration Tribunal, established under the dispute resolution declaration, certifies to the Central Bank of Algeria that all arbitration awards against Iran have been executed. In such a case, the remaining balance of the Security Account shall be transferred to Iran.

2 Retrieved from https://jusmundi.com/fr/document/decision/en-the-islamic-republic-of-iran-v-the-united-states-of-america-award-award-no-568-a27-ft-wednesday-6th-may-1998, para.2, last accessed September 20, 2024.

3 IUSCT, Award No. A-21_62 Case A/21.

4 IUSCT, Award No. 586-A27-FT Case A/27.

Iran's objections specifically focus on the inadequacy of the New York Convention in relation to the recognition and enforcement of the Tribunal's awards. Therefore, it is essential to address the question of what mechanism the Algiers Accords provide for the enforcement of awards, and whether the stipulated conditions for enforcing these awards align with the mechanisms envisioned in the Algiers Accords. Despite the lack of explicit provisions in the Accords for a specific mechanism for enforcement, aside from what is mentioned regarding the Security Account, the New York Convention, as the most widely acclaimed international agreement regarding the enforcement of arbitration awards, also governs the awards issued by the Tribunal.

This paper examines various aspects of the enforcement of awards issued by the IUSCT in two sections. The first section elaborates on the mechanism provided in paragraph seven of the General Declaration, presenting the positions of Iran and the United States regarding this mechanism and ultimately the Tribunal's interpretation in this regard. The second section will scrutinize the applicability of the recognition and enforcement framework of the New York Convention to the awards issued in favor of Iran.

The aforementioned reviews are conducted using library resources, particularly the awards issued by the Tribunal, and a descriptive-analytical methodology. Current literature in Persian regarding the enforcement of the Tribunal's awards is limited to the article "International Arbitration, the Iran-U.S. Claims Tribunal, and the Enforcement of Its Awards."[1] In reviewing existing literature in English, the available works primarily focus on elucidating the mechanisms governing the Algiers Accords, with discussions on the applicability of the New York Convention being notably sparse.

1. Examination of the Mechanism Provided in the Algiers Accords

The instruments of the Algiers Accords include the General Declaration,[2] the Dispute Resolution Declaration,[3] and the commitment documents[4] of each state. Given that these documents were established between states as subjects of international law, concerning their obligations to one another and their nationals, they qualify as an international treaty.[5] Article 1 of the Vienna Convention[6] defines a treaty as "an international agreement concluded in writing between states and governed by international law, whatever its particular designation, and whether embodied in a single instrument or in two or more related instruments." The Algiers Accords align perfectly with this definition.

References in Article 5 of the Dispute Resolution Declaration to principles of commercial law, international law, trade customs, contractual provisions, and *the rule of changed circumstances*

1 Behnam Tirafkan, 'International Arbitration: The Iran-U.S. Claims Tribunal and the Enforcement of Its Awards' (2021) *Fourth International Conference on Legal and Judicial Studies* 139.

2 Declaration of The Government of The Democratic and Popular Republic of Algeria (General Declaration), 19 January 1981.

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5 Gaillard and Savage, *International Commercial Arbitration, Kluwer Law International* (1999) 115; The authors contend that in this regard the Algiers Accords qualify as a *bilateral treaty*.

6 Vienna Convention on the Law of Treaties (1969)

serve as evidence of this assertion.[1] One of the institutions established by the Algiers Accords is the Tribunal, which was agreed upon in the Dispute Resolution Declaration. Accepting that the constituent document of the Tribunal is a treaty and pertains to public international law has direct implications for the nature and status of this authority in international law; treaties are the basis for establishing *inter-state arbitration*. In contrast, *private arbitration* is established through arbitration agreements among private individuals and entities.

The Iran-U.S. Tribunal was created by treaty; however, since it also has jurisdiction over commercial disputes between individuals and states,[2] it is arguably closer in nature to private [3].arbitration. This aspect has led many to consider the Tribunal as having a hybrid nature

The contracting states have adopted the 1976 UNCITRAL rules,[4] with necessary modifications,[5] making the arbitration process governed by this document. However, specific agreements regarding the enforcement of the Tribunal's awards are notably present in paragraph 7 of the General Declaration. This provision establishes a specific enforcement regime for financial awards issued in favor of American parties. The anticipation of such a mechanism in the General Declaration, coupled with instances of non-enforcement of awards in favor of Iran, has brought the issue of the parties' obligations regarding the enforcement of awards before the Tribunal for interpretation by the arbitrators.[6] The above issues are examined below.

1.1. Mechanism for the Enforcement of Awards Issued in Favor of the United States

The Algiers Accords facilitate and ensure the enforcement of Tribunal awards by establishing an Security Account intended to guarantee the enforcement of awards issued in favor of the United States. According to paragraph 6 of the General Declaration, half of the funds and securities of Iran that were seized by American banks must be transferred to an Security Account that Iran will open,[7] allowing American claimants with monetary awards in their favor to execute those awards from this account. The Central Bank of Algeria will issue the transfer order to the beneficiary based on the Tribunal's ruling and the directive of the Tribunal's Chair.

Under paragraph 7 of the General Declaration, the initial value of the funds in this Security Account was set at over one billion dollars. If the balance falls below $500 million during the Tribunal's activities, Iran is obligated to restore the amount to $500 million.[8]

1 Mohsen Mohebi, '*The Legal Nature of the Iran-U.S. Claims Tribunal from the Perspective of International Law*' (1994) 13 *International Legal Journal* 95–144; Ali Maroosi, *Report on the Awards of the Iran-United States Claims Tribunal*, Volume One (Deputy for Drafting, Codification, and Publication of Laws and Regulations 2011).

2 The Tribunal's jurisdiction is articulated in Article 2 of the Dispute Settlement Declaration as follows:

a) Claims by nationals of the United States against Iran, claims by nationals of Iran against the United States, and any counterclaims arising from the agreements, transactions, or events that form the basis of the claim by the respective national...

b) Official claims by Iran and the United States against each other...

c) Disputes concerning the interpretation or implementation of the provisions mentioned in the Declaration.

3 David Caron, '*The Nature of the Iran-United States Claims Tribunal and the Evolving Structure of International Dispute Resolution'* (1990) *American Journal of International Law* 104. 112-114.

4 The parties to the Algiers Declaration did not make any changes to its provisions; rather, the Tribunal's arbitrators reviewed the stipulated rules and, after implementing the desired modifications, agreed on the final version of the rules governing the Tribunal, titled *The Final Tribunal Rules of Procedure*.

5 mutatis mutandis

6 IUSCT, Award No. 586-A27-FT Case A/27, paras 2,3,4.

7 The aforementioned account was opened at the Netherlands Settlement Bank in accordance with the Technical Agreement with N.V. Settlement Bank of Netherlands.

8 Maroosi, *Report on the Awards of the Iran-United States Claims Tribunal* (2011) 26.

The issue concerning the restoration of the Security Account's balance has led to disputes in Case A/1.[1] The United States claims that, according to the provisions of the Accords, all interest from the Security Account must be held in the account alongside the principal amount to ensure the payment of all awards against Iran. In contrast, Iran contends that the interest should belong to it as soon as it accrues, since the funds in the Security Account are considered Iranian property and should be paid to Iran before the awards are executed.[2] Additionally, Iran has never agreed to maintain an amount exceeding one billion dollars in the Security Account, making the U.S. request inconsistent with the provisions of the Algiers Accords. Ultimately, the Tribunal determined, based on the common intent of the parties, banking customs, and the purpose of the Algiers Accords, that the interest should be deposited into a separate account at the Dutch Settlement Bank as soon as it accrues. Iran should have access to this account to restore the Security Account if necessary.[3] Although this mechanism does not impose an additional obligation on Iran regarding the Security Account, it serves as an extra guarantee for the enforcement of awards issued in favor of the United States.[4]

Another critical issue worthy of consideration in this section is the beneficiaries of the Security Account. It is important to note that various classifications of cases have been presented before the Tribunal. For instance, regarding the nature of the disputes being addressed, Case A involves the interpretation or enforcement of the Algiers Accords, while Case B pertains to formal claims made by the United States and Iran against each other.[5] According to Article 7 of the Dispute Resolution Declaration, the Tribunal's jurisdiction encompasses two categories of disputes: first, private disputes—those between nationals of either party against each other or against the contracting parties, whether natural or legal persons, arising from debts, contracts, asset seizures, or any other actions affecting property rights; and second, official disputes—those between Iran and the United States arising from agreements concerning the sale and purchase of goods and services.[6]

In instances where a ruling has been issued against the Iranian government (and not against its nationals), the beneficiaries of the Security Account include both categories mentioned above. This implies that the awards issued in favor of the US extend beyond its government to also include its nationals, such as companies and legal entities that may benefit from the financial resources of the Security Account for the enforcement of their awards.[7]

The wording of the General Declaration and the Dispute Resolution Declaration indicates a lack of specific enforcement mechanisms regarding other awards, including those issued in

1 Iran- Us Claims Tribunal, Decision N0. 12 Case A-1

2 Maroosi, *Report on the Awards of the Iran-United States Claims Tribunal* (2012) 16-25.

3 Ibid, 27-36.

4 Other cases related to the restoration of the security account have also been raised, which are less relevant to the subject of the present writing; however, a brief mention of them is worthy. Notably, in Case A/28, the United States contested Iran's failure to restore the balance of the security account, thereby alleging a breach of Iran's obligations under the Algiers Accords. The Tribunal, after deliberation, determined that Iran was obligated to restore the balance of the security account in accordance with paragraph 7 of the General Declaration. Iran, arguing that the current balance of the security account was sufficient to cover the payments of the issued awards, did not take further action on this matter. However, ultimately, after five years, in 2005, Iran took steps to restore the balance of the security account.

5 Naser Ali Mansourian, '*The Iran-U.S. Claims Tribunal: A Manifestation of the Confrontation Between Two Civilizations in the Legal* Sphere' (2001) 150.

6 Chiara Giorgetti, *The rules, practice, and jurisprudence of international courts and tribunals*, (2012) 552-553.

7 Ibid, 555, referring to *Islamic Republic of Iran* v. *United states of America*, Award No. 586-A27.

favor of Iran. The parties have relied on the general statements in paragraph 1 of Article 4 of the Dispute Resolution Declaration regarding the definitiveness and binding nature of the Tribunal's decisions, and paragraph 3 of the same article, stating that the enforcement of awards will be governed by the laws of each country. The Iranian government has raised claims of violations of these provisions by the U.S. government and the absence of appropriate practices in the enforcement of awards. Notable instances of Iran's objections include the non-enforcement of awards in the *Gould and Avco* cases.[1]

In the *Gould* case,[2] the Tribunal ordered the United States to pay 3,640,247 dollars to the Iranian Ministry of Defense. Additionally, the ruling mandated *Gould Marketing* to deliver equipment owned by the Iranian Ministry of Defense to the relevant authority.[3] Following three years of non-voluntary compliance by the U.S. with the ruling, Iran sought enforcement of the award from the Federal District Court for the Central District of California. The court, asserting its jurisdiction based on the criteria established in the New York Convention, surprisingly upheld the damages specified in the ruling but modified the obligation of *Gould* to deliver the equipment. The court found this obligation to be inconsistent with the export restrictions in the United States, stipulating that Iran could refile its request once the restrictions were lifted.[4] The ruling was appealed by Iran, arguing that it should be upheld in its entirety *"as is"* without modifications. As anticipated, the Ninth Circuit Court of Appeals overturned the part of the ruling exempting *Gould* from delivering equipment to Iran and remanded the case for reconsideration by the lower court.[5]

After these proceedings and the re-submission of the case to the Federal Court, *Iran* and *Gould* entered into an agreement to fulfill the obligations arising from the award, stipulating that a specified amount would be paid by *Gould* to Iran and that the disputed equipment would be delivered to a warehouse located in the United States.[6] Despite the fulfillment of these obligations, the actions of the U.S. Federal Court in modifying and amending the Tribunal's ruling have been the subject of Iranian objections, raising doubts about the definitiveness and binding nature of the Tribunal's awards.[7]

In the *Avco* case,[8] the issue of non-enforcement of the award issued in favor of Iran was raised differently. A brief overview of the case is as follows: the American company *Avco* claims payments from the Iranian Aerospace Industries Company based on unpaid invoices. In this case, the claimant provided a certified copy of the invoices and did not submit the originals. The Iranian respondent also filed counterclaims against *Avco*. Ultimately, the Tribunal ordered the American company to pay 3,781,200 dollars, including interest, to Iran. This ruling was not voluntarily executed, prompting Iran to request enforcement from the Federal Court in

1 IUSCT, Award No. 586-A27-FT Case A/27. paras 12-17.
2 IUSCT, Decision 2-49/50_136 Case 49, 50.
3 Maroosi, *Report on the Awards of the Iran-United States Claims Tribunal* (2014) 148-161.
4 Central District of California, *Ministry of Defense v. Gould, Inc.* (1978).
5 United States Court of Appeals, Ninth Circuit, *Ministry of Defense v. Gould, Inc.* (1992).
6 Retrieved from https://jusmundi.com/fr/document/decision/en-the-islamic-republic-of-iran-v-the-united-states-of-america-award-award-no-568-a27-ft-wednesday-6th-may-1998, September 20, 24.
7 Although not explicitly stated in the ruling, it appears that the U.S. court, referencing the non-enforcement provisions of the New York Convention outlined in paragraph 2(b) of Article 5, exempted Gould from delivering the equipment. In effect, the court seemed to regard the restrictions governing the export of the equipment covered by the ruling as matters of economic public policy.
8 IUSCT, Award No. 377-261-3 Case 261.

Connecticut in 1991.[1] *Avco* sought to vacate the ruling, arguing that its right to a fair trial had been violated, contending that the Tribunal had noted that *Avco* failed to present the original invoices and that its claim was therefore dismissed; however, it claimed that the Tribunal did not request the submission of the originals, thus denying the claimant a fair trial. Consequently, the court refused to enforce the ruling based on paragraph 1(b) of Article 5 of the New York Convention.[2]

1.2. Interpretation of the Parties' Obligations Regarding the Enforcement of Awards by the Tribunal

Numerous instances of non-enforcement or delayed and discriminatory enforcement of awards issued in favor of Iran prompted Iran to request an interpretive opinion from the Tribunal regarding the U.S. obligations to enforce these awards, in accordance with paragraph 17 of the General Declaration and paragraph 4 of Article 6 of the Dispute Resolution Declaration. Based on these provisions, the Tribunal is the competent authority for interpreting and enforcing the Algiers Accords and makes decisions upon the request of either party in such matters. Accordingly, Iran requested that the Tribunal not only acknowledge the U.S. violations of its obligations but also interpret how the U.S. is obligated to enforce awards issued in favor of Iran. The primary aim of Iran in this action was to clarify whether a mechanism similar to the Security Account could be envisioned for awards issued in its favor.[3]

The obligations of the United States regarding the enforcement of awards issued in favor of Iran have been discussed in various cases, notably in Cases *A/21* and *A/27*. Due to the focus of Case A/27 on the enforcement of the New York Convention, it is addressed in the subsequent section. Here, we outline the enforcement mechanism of the Tribunal as discussed in Case A/21,[4] including the arguments of both parties and the Tribunal's final opinion.

1.2.1. Iran's Arguments

Iran's argument that the United States has violated its obligations under the Algiers Accords mainly relies on the refusal of U.S. courts to enforce awards issued in the *Gould* case. Citing the explicit phrases in paragraph 1 of Article 4 of the Dispute Resolution Declaration regarding the "final and binding" nature of the awards, Iran asserts that the United States is obligated to establish a mechanism to guarantee the enforcement of all awards issued by the Tribunal. Thus, the U.S. commitment in this regard encompasses awards against it and its affiliated entities. This interpretation, considering the parties' intent to conclude all legal actions and ongoing claims in other forums in favor of arbitration as provided in the Algiers Accords, seems more logical. Iran argues that this clause indicates that the Tribunal is the sole governing authority for the disputes between the parties, and once it issues a ruling, recourse to another authority for enforcement becomes irrelevant.[5]

Another aspect of Iran's reasoning stems from principles of *Customary International Law*. The rationale for applying these principles is that the Tribunal is an international court

1 United States District Court of Connecticut, *Iran Aircraft Industries v. Avco Corp*.
2 Maroosi, *Report on the Awards of the Iran-United States Claims Tribunal* (2011) 97-98.
3 John Collier, *The Settlement of Disputes in International Law* (1999) 83.
4 IUSCT, Award No.A-21_62 Case A/21.
5 Maroosi, *Report on the Awards of the Iran-United States Claims Tribunal* (2012) 659.

established under a treaty-like agreement and addresses disputes between states. Consequently, treaties create a "reciprocal system of commitments" between the parties. Therefore, under this principle, if awards issued by the Tribunal are not enforced by U.S. legal entities, a mechanism similar to the Security Account should also be envisioned for awards in favor of Iran. Overall, Iran considers the prevailing practices of U.S. courts in enforcing the Tribunal's awards as ineffective and inconsistent with the provisions of the Algiers Accords, demanding the establishment of a mechanism similar to the Security Account or legislative action by the U.S. to recognize the Tribunal's awards based on "full faith and credit,"[1] akin to awards issued under ICSID.[2]

1.2.2. U.S. Arguments

In response, the United States presents arguments contrary to those of Iran, initially questioning the Tribunal's jurisdiction to decide on the dispute. It claims that the matter at hand does not pertain to interpretation; the absence of a specific mechanism in the Tribunal's regulations indicates that the parties did not foresee such an issue, making it non-justiciable. Even if the Tribunal is deemed competent to address the substance of the matter, the U.S. merely notes that the finality and binding nature of the Tribunal's awards, along with the inability to appeal or revisit the issued rulings, do not imply that the U.S. government is responsible for enforcing awards that impose obligations on American companies and commercial entities.

1.2.3. The Tribunal's Opinion

The Tribunal, accepting its jurisdiction under paragraph 4 of Article 6 of the Dispute Resolution Declaration, acknowledged Iran's request and stated that the matter at hand primarily involves the interpretation and scope of application of the provisions of the Accords. It confirmed that the claim has been appropriately presented.

In deciding the matter, the Tribunal emphasized the treaty nature of the Algiers Accords and adopted a method of interpretation based on paragraph 1 of Article 31 of the Vienna Convention on the Law of Treaties. According to this provision, the Tribunal considers the elements of good faith and the ordinary meaning of terms, taking into account the context and purpose of their use.

Using this interpretative method, the Tribunal found no basis for imposing on the United States a different enforcement mechanism for the awards issued by the Tribunal or for requiring the fulfillment of obligations arising from those awards unless such actions are undertaken voluntarily. The ordinary meaning of the terms "final and binding," when used in arbitration-related documents, implies that if these awards are not voluntarily executed, the award creditor must approach the competent authorities to seek enforcement. Thus, these terms do not suggest that arbitral awards can be executed without any subsequent action.

Iran's argument regarding the existence of mutual obligations between the parties was also rejected by the Tribunal, as the application of *customary international law* principles cannot create obligations for one party of a treaty that contradicts the explicit terms of the document.

1 In U.S. law, states are required to recognize and enforce awards issued by other states as well as foreign awards.

2 Awards issued by ICSID are enforced in member countries based on the principle of "full faith and credit." Generally, these awards are not subject to appeal, with only specific conditions outlined in Article 51 of the Washington Convention providing exceptions to this rule.

Moreover, the provisions of the Algiers Accords only recognize the Security Account mechanism for awards issued against Iran and contain explicit regulations for the enforcement of awards according to the laws of the place of enforcement, closing off any contrary conclusions.

The Tribunal further stated that the importance of the obligations imposed by the conclusion of an international treaty on the parties should not be overlooked. These obligations include the good faith and effective implementation of the treaty. The Algiers Accords impose the requirement that the parties implement its provisions within their national systems, considering the treaty's objectives, which include resolving disputes through the establishment of a permanent arbitration tribunal and issuing binding awards. Consequently, the Tribunal's awards should be recognized as valid and enforceable within national systems. The manner of enforcing these awards, aside from the regulations concerning the Security Account, is not specified in the Algiers Accords and depends on the regulations of the national systems of each party.

Ultimately, the Tribunal concluded that as long as there is a valid practice in enforcing arbitral awards within the legal systems of the parties, they cannot be held liable to establish a special mechanism for enforcing these awards. In the absence of any such established mechanism for recognizing arbitral awards, a final and binding practice must be established for recognizing the Tribunal's awards in a manner that does not create any discrimination in the enforcement of the discussed awards. Regarding Iran's request, there is no evidence indicating a lack of enforcement practice for arbitral awards in the United States. On the contrary, the Iranian government has not sufficiently utilized the legal avenues available in the U.S. For instance, in the *Gould* case, the enforcement of the award concluded with a settlement agreement between the parties, rendering the issue of the lack of an enforcement mechanism in the U.S. irrelevant in that case.

Based on the aforementioned reasons, the Tribunal dismissed all arguments presented by Iran and did not hold the U.S. government responsible for enforcing awards issued against its affiliated institutions and companies.[1]

2. Examination of the Feasibility of Implementing the New York Convention

Now that it has been established that the Algiers Accords contain a general provision in Article 4 of the Dispute Resolution Declaration regarding the enforcement of awards, and that the Tribunal's practice indicates that the national legal system of the place of enforcement governs the execution of the award, it is necessary to explore the feasibility of enforcing awards under the New York Convention.[2] This Convention is one of the most successful agreements between states, recognized by 172 countries.[3]

As previously mentioned, the United States implements the awards issued by the Tribunal according to the recognition and enforcement framework of the New York Convention. In Case A/21, Iran presented arguments regarding the incompatibility of the Convention's provisions with the finality and binding nature of awards mentioned in Article 4 of the Dispute Resolution

1 Maroosi, *Report on the Awards of the Iran-United States Claims Tribunal* (2012) 657-667.

2 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

3 Retrieved from https://www.newyorkconvention.org/contracting-states, last accessed on September 20, 2024.

Declaration. In this section, we first examine the arguments of both parties and the Tribunal's opinion regarding the applicability of the New York Convention to the enforcement of issued awards. Then, we briefly assess whether, regardless of the Tribunal's ruling and the arguments of the parties, the New York Convention can be deemed applicable to awards from a body closely related to *public international law*.

2.1. Examination of the Applicability of the New York Convention Based on Case A/27

Case *A/27*[1] arose following the U.S. court's refusal to enforce the award issued in the *Avco* case. As explained, the court's refusal was based on grounds outlined in Article 5 of the New York Convention.[2] The case under consideration was filed after Case A/21, with Iran seeking to demonstrate that the New York Convention does not provide an adequate framework for enforcing Tribunal awards. Therefore, the absence of a suitable domestic system referenced by the Tribunal in Case A/21 necessitates that the U.S. establish a specific mechanism commensurate with the final and binding nature of the Tribunal's awards. Accordingly, Iran has reiterated its claim of U.S. violations of its obligations regarding the enforcement of awards. Below, we review the arguments presented and the Tribunal's ruling in this case.

2.1.1. Iran's Arguments

A significant portion of Iran's arguments in this case relies on paragraph 15 of the Tribunal's ruling in Case A/21, where it stated, "If an enforcement mechanism does not exist within the national system of the parties, or if recourse to it ultimately leads to non-enforcement of the Tribunal's rulings or unreasonable delay in their execution, this constitutes a violation of the Algiers Accords." The *Avco* case exemplifies the realization of the Tribunal's opinion in ruling A/21, indicating that the U.S. has breached its obligations under the Algiers Accords.

Iran's related argument regarding the applicability of the New York Convention posits that the Tribunal and its awards possess international characteristics, as it was established under the Algiers Accords, which have the nature of a treaty, and adjudicates disputes between states. Consequently, the New York Convention cannot apply to the Tribunal's awards, as the Convention pertains to foreign arbitral awards, not international ones. The international character of the Tribunal conflicts with the provisions of Article 5 of the Convention, which outlines grounds for the non-enforcement of arbitral awards.

Iran further asserts that the international nature of the Tribunal implies the supremacy of customary international law over it, under which awards issued by an international body cannot be subject to review or non-enforcement by domestic courts. The only permissible aspect of examining international awards is their authenticity. Thus, the New York Convention is inadequate both in terms of its applicable scope over foreign awards and the existence of Article 5, which recognizes grounds for non-enforcement. Iran argues that the non-enforcement of the aforementioned awards under the Convention should be regarded as a violation of U.S. obligations under the Algiers Accords.

1 IUSCT, Award No. 586-A27-FT Case A/27.

2 Article 5 of the New York Convention enumerates the grounds for refusing the recognition and enforcement of an arbitral award. These grounds are as follows: lack of capacity of the parties, invalidity of the arbitration agreement, failure to comply with due process, issuance of an award on matters not subject to arbitration, and contravention of public policy.

2.1.2. U.S. Arguments

In response to the aforementioned points, the United States contends that under the Algiers Accords, its obligations regarding the enforcement of awards are summarized in three areas: 1) the existence of a mechanism for enforcing arbitral awards within its legal framework; 2) ensuring Iran's access to that mechanism; and 3) the mechanism must be applied without discrimination concerning awards issued by the Tribunal. The U.S. asserts that the framework governing the enforcement of awards within its legal system, namely the New York Convention, effectively fulfills these obligations.

The U.S. rejects the interpretation of the Tribunal's ruling in Case A/21, asserting that a correct understanding of paragraph 15 indicates that if the absence of an enforcement mechanism leads to non-enforcement or delays in executing awards, this constitutes a violation of the Algiers Accords. This does not consider a scenario where the governing system recognizes a specific award as unenforceable based on existing exceptions.

Regarding the legal nature of the Tribunal, the U.S. argues that it is a hybrid entity. While established by the Algiers Accords and deriving from public international law, it also has jurisdiction over disputes that are fundamentally commercial and pertain to private individuals. The reference to commercial law principles as applicable rules for disputes, as noted in Article 5 of the Dispute Resolution Declaration, supports this claim. Therefore, the Tribunal's nature should not impede the application of the New York Convention.

Furthermore, the U.S. contends that the New York Convention serves as the primary framework for recognizing arbitral awards acknowledged by the international community, and Iran cannot assert that it does not apply to awards issued by the Tribunal.

2.1.3. The Tribunal's Opinion

The most significant aspect of the Tribunal's ruling in Case *A/27* is its elucidation of the legal nature of this entity. The Tribunal states that, as agreed by the parties, this authority was established through an international agreement between Iran and the United States. Both countries have designated the Tribunal as competent to adjudicate disputes between the two states and claims by nationals of either contracting party against the other state. Consequently, the international nature of the Tribunal is obvious and indisputable, and the involvement of individuals and private legal entities does not contradict this international character. Based on this understanding, final rulings issued by international tribunals are considered "enforceable."

Regarding the applicability of the New York Convention and Iran's claims about its incompatibility with the final and binding nature of the awards issued, as well as the reference to the non-enforcement of the *Avco* award, the Tribunal states in the first part of its opinion that, regardless of the appropriateness of the Convention as the enforcement system chosen by the U.S., the court's decision regarding the non-enforcement of the *Avco* ruling contains significant errors. The court based its refusal on the premise that the failure to provide original invoices was the ground for rejecting the American claims and issuing a ruling in favor of Iran. It considered this matter to fall under Article 5 of the New York Convention and asserted that the U.S. was misled regarding the necessity of providing the original invoices and was not afforded a fair trial.

However, a careful examination of the *Avco* ruling reveals that the basis for holding the U.S. accountable was not the failure to present original invoices, but rather that the Tribunal believed the American claimant was not entitled to the requested amount. In other words, the existence of the debt was questioned by the Tribunal, not the method of presenting the invoices.

The court's significant error in refusing to enforce the *Avco* ruling results in U.S. liability regarding its failure to comply with the provisions of the Algiers Accords. The well-established *principle of state responsibility* holds that any error stemming from the judiciary of a country is attributed to that country at the international level, which reinforces this conclusion. Therefore, the Tribunal ultimately obligates the U.S. to pay the *Avco* award and the interest on that amount.

Regarding the suitability of the New York Convention as the enforcement mechanism chosen by the U.S., the Tribunal acknowledges that the exceptions outlined in Article 5 of the Convention appear to conflict with states' obligations under the Algiers Accords. However, it notes that the Iranian claimant in the *Avco* case did not object to the way the Tribunal interpreted its ruling and even waived certain deadlines for objections. Thus, the incompatibility of the New York Convention with the nature of the awards issued by the Tribunal remains unproven, and this issue cannot be addressed at this stage.

2.2. Applicability of the New York Convention Conditions to Tribunal Awards

The New York Convention was initially introduced as the governing system for the recognition and enforcement of foreign arbitral awards. Its increasing acceptance in international trade law and regarding the uniform recognition and enforcement of arbitral awards raises the question of whether it can also apply to awards of a mixed nature. Despite the varying opinions on this matter, it seems reasonable to apply the Convention to awards issued by bodies with dual characteristics, such as the Tribunal.

To be recognized and enforced under this Convention, a foreign arbitral award must meet the following conditions: there must be a valid arbitration agreement between the parties, there should be no grounds for non-enforcement as specified in Article 5 of the Convention (i.e., parties must have the capacity to arbitrate, fair proceedings must be observed, the award must not conflict with the public policy of the enforcement state, and it must not pertain to matters that are non-arbitrable).

Among these conditions, the existence of an arbitration agreement between the parties to the Algiers Accords may be contentious, as it differs from the typical arbitration agreements reflected in commercial contracts. The disagreement regarding the foreign nature of the awards in question and the exceptions in Article 5 was illustrated in the examination of Case *A/27*. Below, we attempt to address these challenges and demonstrate the applicability of the New York Convention to the Tribunal's awards.

As stated above, the basis for the Tribunal's jurisdiction over Iran-U.S. claims is the Algiers Accords. This situation—where the Tribunal's jurisdiction is derived from a declaration that is not a conventional contractual agreement between private parties but rather a treaty between states—raises questions about whether the Algiers Accords constitutes an arbitration agreement in the sense of Article 2 of the New York Convention. The specific form of consent expressed in the Algiers Accords has somewhat weakened the contractual basis of arbitration, though it

has not been completely nullified.[1] Moreover, the broad interpretation of consent by courts reinforces the parties' intention to resolve ongoing disputes in courts and initiate arbitration, as explicitly stated in the Algiers Declaration, thus fulfilling the definition of an arbitration agreement under the New York Convention.[2] In essence, consent is the only substantive element of the arbitration agreement that is validly expressed in the Algiers Accords, while the procedural requirement of a written agreement also exists.

Regarding the objection of the foreign nature of the awards, it is noteworthy that various sources have affirmed the applicability of the Convention to awards from permanent arbitral tribunals or ad hoc arbitral tribunals with dual characteristics.[3] The broad wording of Article 1 of the Convention indicates that "foreign" refers to the recognition and enforcement of awards in a location other than where the award was issued. This definition encompasses awards from international tribunals and those issued by the IUSCT since it's Seat is located in the Netherlands. Furthermore, awards from international courts only require a specific mechanism and do not fall under the New York Convention if they involve political situations, such as border determinations or human rights violations.[4] In the case of the IUSCT, this issue is irrelevant, as the involvement of state and governmental institutions as one of the parties in disputes does not preclude the commercial nature of the conflict or remove political issues from its scope.[5]

Finally, regarding the grounds for non-enforcement listed in Article 5 of the Convention, two important points must be noted. First, given the Convention's policy of supporting the enforcement of arbitral awards, the grounds in this article should be interpreted narrowly. Generally, all provisions of the Convention are interpreted in a manner that upholds the Convention and facilitates the enforcement of arbitral awards. For example, regarding arbitration agreements, the Convention presumes the validity and enforceability of such agreements. This presumption aligns with the Convention's goal of supporting the recognition and enforcement of arbitral awards. The drafting context of Article 2, which first invites member states to recognize arbitration agreements and subsequently mentions the grounds for their invalidation, also suggests a presumption of the validity of arbitration agreements.[6]

The second point is clarified by a closer examination of the *Gould* and *Avco* cases. In the *Gould* case, the U.S. court initially stated that the Iranian Ministry of Defense lacked legal standing to bring a claim in U.S. courts because the Iranian government had not yet been recognized. However, the U.S. Department of State, in correspondence with the court, indicated that the U.S. government had an interest in the case and could overlook the aforementioned issue, allowing the proceedings to continue. It seems that the U.S. government, as an interested party and one of the signatories of the Algiers Accords, could choose to waive the application

1 Gaillard & Savage, *International Commercial Arbitration, Kluwer Law International* (1999) 34.

2 UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, UNCITRAL (2016) 43-44.

3 Van den Berg, *The New York Convention of 1958: An Overview* (2020) 44; UNCITRAL Secretariat, *Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards* 1958 (2016) 28.

4 Moses, *The Principles and Practice of International Commercial Arbitration* (2017) 273.

5 Gaillard & Savage, *International Commercial Arbitration* (1999) 42.

6 Bahmani & Solhi, *Challenges in the Recognition and Enforcement of Arbitral Awards within the Framework of Article 2 of the 1958 New York Convention* (2021) 121.

of Article 5 of the New York Convention regarding the Tribunal's awards, thereby eliminating the basis for revisiting the issued ruling by the court.

Conclusion

The Algiers Accords is an international document established between the governments of *Iran* and *the United States*. A superficial examination of the relevant provisions in this document suggests an inequality in the obligations imposed on the parties, with awards issued in favor of Iran frequently facing non-enforcement by U.S. courts.

The arguments analyzed regarding the interpretation of the prevailing practices for recognizing and enforcing awards in favor of Iran indicate that the absence of a specific mechanism for the enforcement of these awards does not imply that enforcement is impossible. Iran can utilize the potential of the New York Convention to enforce the awards issued against the U.S. Recognizing the applicability of the New York Convention aligns better with the actual practices of U.S. courts, which are parties to the treaty, and contributes to the desired coherence in the recognition and enforcement of foreign arbitral awards.

Thus, the hypothesis posited in response to the primary research question regarding the supremacy of the New York Convention over the Tribunal's awards is confirmed. Regarding the compatibility of the Convention's framework with the hybrid nature of the Tribunal, as evidenced in the analyses of the *Gould* and *Avco* cases, the non-enforcement of these awards was not due to the inadequacy of the New York Convention but rather due to other procedural issues. Furthermore, any unjustified non-enforcement of awards can be addressed by the Tribunal, which can issue rulings for compensation.

In conclusion, the Algiers Accords were drafted with the aim of providing an effective solution to the complex issues between the parties, which is why the principle of sovereign equality of states is less emphasized in the document. The existing imbalance in certain provisions, such as the Security Account, should be interpreted as a compromise aimed at resolving disputes.

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Arbitration in Iran: Challenges and Opportunities

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ABSTRACT

Iran's Law on International Commercial Arbitration (LICA), inspired by the UNCITRAL Model Law on International Arbitration, was enacted in 1997 with the aim of modernizing the country's approach to international commercial disputes. Employing a descriptive-analytical methodology, this paper analyzes LICA's strengths and weaknesses with a focus on the Iranian Constitution which- as the country's Supreme Law - has seemingly eclipsed the arbitration process. Specifically, this research zeroes in on the potential conflict between Article 139 of the Constitution, which mandates parliamentary approval for foreign disputes involving state assets, and the inherently expeditious nature of arbitration. This study argues that these constitutional formalities - while safeguarding national interests - should be reduced as they may hamper the efficiency and expeditiousness typically associated with arbitration. The author proposes that - as arbitration is intertwined with less formality - the Guardian Council can invoke its constitutional powers to curtail these formalities and create an environment conducive to a standard arbitration process. This analysis maintains that the Iranian Constitution does not necessarily supersede arbitration provisions, and proposes that the Council has the authority to streamline arbitral procedures within the legal framework of the Islamic Republic of Iran.

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Introduction

Arbitration is a method that aims to resolve disputes without the need to go to court, and impartial arbitrators can be hired to settle a dispute in a friendly and cooperative manner. Parties often opt for arbitration over litigation for several reasons. One of the most important reasons is the enforceability of arbitral awards. Dr. Anton G. Maurer, a leading alternative dispute resolution (ADR) professional focused on arbitration and resolution of cross-border disputes, reinforces this by saying: "Foreign arbitral awards are enforceable in at least 172 countries under the New York Convention[1] or, if applicable, the Inter-American Convention on International Commercial Arbitration. Convention countries are obliged to enforce foreign arbitral awards except for seven reasons, which are stipulated in Article V of the relevant convention."[2] Finality is another reason that attracts parties to a dispute to choose arbitration. Maurer has also highlighted this in his enumeration of ten reasons, noting, "Generally, an arbitral award is final. There is no appeal. Even a court that is asked to set aside an arbitral award will not fully review the decision (no révision au fond), only whether the special reasons for setting aside an award are met."[3] From among other reasons one can say that arbitrations are efficient and cost-effective, which means they can be quicker compared to court litigation. Another reason is that international commercial arbitration proceedings are "private and not open to the public or third parties unless the parties agree otherwise".[4]

Gloria Miccioli[5], American Society of International Law Electronic Resource Guide, believes the non-judicial nature of arbitration is attractive. "As the number of international commercial disputes mushrooms, so too does the use of arbitration to resolve them. The non-judicial nature of arbitration makes it both attractive and effective for several reasons. There may be distrust of a foreign legal system on the part of one or more of the parties involved in the dispute. In addition, litigation in a foreign court can be time-consuming, complicated, and expensive. Further, a decision rendered in a foreign court is potentially unenforceable. On the other hand, arbitral awards have a great degree of international recognition. For example, more

1 As of January 2023, the convention has 172 state parties, which includes 169 of the 193 United Nations member states plus the Cook Islands, the Holy See, and the State of Palestine.

2 Available at https://www.jamsadr.com/blog/2024/10-reasons-why-companies-prefer-to-resolve

3 ibid

4 ibid

5 Available at https://www.asil.org/sites/default/files/ERG_ARB.pdf (last accessed on Nov. 26, 2024). Authored by Gloria Miccioli, published by the American Society of International Law (ASIL)

than 172 countries have agreed to abide by the terms of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958."

She adds that another reason for favoring arbitration is the involvement of a mutually agreed-upon panel of arbitrators. These experts may possess specialized knowledge in the specific field of dispute. Arbitral awards are typically final and binding, streamlining the resolution process and eliminating lengthy appeals. Additionally, the confidentiality inherent in arbitration appeals to those seeking to keep settlement terms private. Miccioli holds that a significant challenge in researching international commercial arbitration is the increasing interest from external parties as the practice gains popularity. "However, because many awards are not made public, it can be frustrating to search for information."[1]

The Islamic Republic of Iran – as part of its efforts to facilitate the resolution of international commercial disputes and update the country's laws governing commercial disputes – passed the Law on International Commercial Arbitration (LICA)[2] in 1997. This research will primarily explore global conventions governing commercial arbitration and bilateral investment treaties (BITs). Subsequently, it will delve into the UNCITRAL Model Law on International Commercial Arbitration and its functions. The final part of this paper will analyze Iran's Law on International Commercial Arbitration, highlighting its challenges, limitations, innovations, and achievements in light of Article 139 of the Constitution and Chapter Seven of the Iranian Code of Civil Procedure.

1. International Commercial Arbitration Conventions

International Commercial Arbitration Conventions are legal treaties that establish a framework for settling international commercial disputes via arbitration. The objective of these conventions is to encourage cross-border trade and investment by developing a reliable dispute-resolution mechanism. International commercial arbitrations are often governed by multilateral conventions signed by member states. Based on International Commercial Arbitration (ICA), States choose to settle their disputes without the involvement of the courts of a particular country, which is more expeditious and cost-effective. The conventions act as facilitators and streamline the process of dispute settlement. A comprehensive list of major conventions can be found on the website of Columbia Law School's Diamond Law Library[3], as referenced below.

1.1. Geneva Protocol and Geneva Convention

Two early modern agreements on International Commercial Arbitration are the 1923 *Geneva Protocol* and the *1927 Geneva Convention*.

1.2. New York Convention (United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards)

Replacing the Geneva Protocol and Geneva Convention is the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, otherwise known as the *New York*

1 Available at https://www.asil.org/sites/default/files/ERG_ARB.pdf
2 English translation available at www.newyorkconvention.org/media/uploads/pdf/5/7/570_the-law-concerning-international-commercial-arbitration-iran.pdf
3 Available at https://guides.law.columbia.edu/c.php?g=1143492&p=8594689

Convention.[1] Once a state becomes a party to the New York Convention, they are no longer subject to the Geneva Protocol and Geneva Convention. The list of parties to the New York Convention and their potential declarations or reservations can be found in the *UN Treaty Collection.*[2]

1.3. European Convention on International Commercial Arbitration

The *European Convention*[3] on ICA deals with arbitration agreements, arbitral procedures, and awards. The list of parties to this convention and any declarations or reservations made by the parties to the convention are available through the *UN Treaty Collection*.

1.4. Panama Convention (Inter-American Convention on International Commercial Arbitration)

This convention was entered into in 1975 among the United States and most South American nations. It is also known as the *Panama Convention*.[4] The signatories to the convention can be found through the website of the *General Secretariat of the Organization of American States.*[5]

1.5. ICSID Convention; Washington Convention (International Center for the Settlement of Investment Disputes Convention)

This convention is also known as the ICSID Convention or the Washington Convention of 1965. It deals with investment disputes between a state (or some state entities) and an individual who is a national of another state that signed the ICSID convention. The language of the *convention,*[6] rules and regulations regarding arbitrations through the can be found through the website of the World Bank as well as a current list of *parties*[7] to the ICSID convention.

1.6. Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters

This *convention*[8] was concluded in 1971, but has been entered into by only 5 countries. Currently, the five *signatories*[9] are: Albania, Cyprus, Kuwait, Netherlands and Portugal.

1.7. Council Regulation

Council regulation[10] on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters deals with the issue of enforcement of arbitral decisions for members of the European Union.

1.8. Inter-American Convention on International Commercial Arbitration

The text of the *convention*[11] and the *signatories*[12] can be found on the Organization of American States website.

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1 Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/new-york-convention-e.pdf
2 Available at https://treaties.un.org/Pages/Home.aspx?clang=_en
3 Available at https://treaties.un.org/doc/Treaties/1964/01/19640107%2002-01%20AM/Ch_XXII_02p.pdf
4 Available at https://treaties.un.org/doc/Publication/UNTS/Volume%201438/volume-1438-I-24384-English.pdf
5 Available at https://www.oas.org/juridico/english/Sigs/b-35.html
6 Available at https://icsid.worldbank.org/sites/default/files/ICSID%20Convention%20English.pdf
7 Available at https://icsid.worldbank.org/sites/default/files/ICSID-3.pdf
8 Available at https://assets.hcch.net/docs/bacf7323-9337-48df-9b9a-ef33e62b43be.pdf
9 Available at https://www.hcch.net/en/instruments/conventions/status-table/?cid=78
10 Available at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:012:0001:0023:en:PDF
11 Available at https://www.oas.org/en/sla/dil/inter_american_treaties_B-35_international_commercial_arbitration.asp
12 Available at https://www.oas.org/juridico/english/sigs/b-35.html

2. Bilateral Investment Treaties

Fair and equitable treatment, protection from expropriation, and the free transfer of funds[1] are among the major characteristics of Bilateral Investment Treaties (BITs). These international agreements typically also include provisions allowing foreign investors to initiate international arbitration proceedings against the host state in certain types of investment disputes. These treaties often contain clauses ensuring the enforceability of international arbitration awards. Investment treaty terms are often the subject of extensive negotiation between state parties, the result being that no two investment treaties are ever the same.[2]

Researchers and anyone interested in BITs can now easily explore relevant agreements thanks to the official website of the International Center for Settlement of Investment Disputes (ICSID). The website offers a user-friendly database[3] allowing users to browse treaties by country, year of signature, and keyword search. Furthermore, the United Nations Conference on Trade and Development (UNCTAD) provides a comprehensive database of Bilateral Investment Treaties (BITs). This searchable database[4] allows users to explore all BITs entered into by a specific country, including their signature and entry into force dates.

3. UNCITRAL Model Law on International Commercial Arbitration

The International Commercial Arbitration Model Law[5], originally adopted in 1985 and amended[6] in 2006, provides a framework to help countries modernize their legal systems to accommodate international commercial arbitration. The United Nations Commission on International Trade Law (UNCITRAL) maintains a record of countries[7] that have adopted ICA legislation consistent with the Model Law. Iran's 1997 Law on International Commercial Arbitration (LICA) has adopted its principles from the UNCITRAL Model Law.

According to the official website of the UN, "it covers all stages of the arbitral process from the arbitration agreement, the composition and jurisdiction of the arbitral tribunal and the extent of court intervention through to the recognition and enforcement of the arbitral award. It reflects worldwide consensus on key aspects of international arbitration practice having been accepted by States of all regions and the different legal or economic systems of the world. Amendments to articles 1 (2), 7, and 35 (2), a new chapter IV A to replace article 17 and a new article 2 A were adopted by UNCITRAL on 7 July 2006. The revised version of Article 7 is intended to modernize the form required of an arbitration agreement to better conform with international contract practices. The newly introduced Chapter IV A establishes a more comprehensive legal regime dealing with interim measures in support of arbitration. As of 2006, the standard version of the Model Law is the amended version. The original 1985 text is also reproduced in view of the many national enactments based on this original version."[8]

1 Available at https://guides.ll.georgetown.edu/c.php?g=371540&p=4187393#:~:text=BITs%20grant%20investors%20from%20a,disputes%20with%20the%20host%20state.

2 Available at https://www.lexology.com/library/detail.aspx?g=6b317652-49f0-4038-bc36-7f7550afa115

3 Available at https://icsid.worldbank.org/resources/databases/bilateral-investment-treaties

4 Available at https://investmentpolicy.unctad.org/international-investment-agreements/by-economy#iiaInnerMenu

5 Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-54671_ebook.pdf

6 Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf

7 Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/overview-status-table.pdf

8 Available at https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration

4. Two Main Types of Arbitration: Institutional and Ad Hoc

Institutional arbitration is overseen by an organization that provides administrative support and follows specific rules. Ad hoc arbitration is more flexible, as the parties involved agree on the specific rules and procedures to be followed. In both cases, arbitrators, who are independent decision-makers, are selected to resolve the dispute. However, in institutional arbitration, the institution plays a more active role in administering the process, while in ad hoc arbitration, the parties have more control over the proceedings.

Although parties are free to arbitrate without the assistance of an arbitral institution, institutional arbitration is often preferred because it relieves the parties of the complicated process of producing their own appropriate set of rules and procedures and enables them to rely instead on the time-tested rules developed by an arbitral institution.[1]

5. Ad Hoc Arbitrations

Unlike institutional arbitrations, ad hoc arbitrations – sometimes referred to as an unadministered arbitration – are not administered by a specific institution. Instead, they are privately arranged by the parties involved in the dispute.

Two commonly used sets of rules for ad hoc arbitrations are:

5.1. UNCITRAL Arbitration Rules

The UNCITRAL Arbitration Rules, developed by the United Nations Commission on International Trade Law[2] (UNCITRAL), provide a framework for conducting ad hoc arbitrations. Both the original (1976) and updated (2014) versions of the rules are available on the UNCITRAL website.

5.2. CPR Rules for Non-Administered Arbitration of International Disputes

International Institute for Conflict Prevention & Resolution (CPR)[3] has developed its own set of rules[4] for ad hoc arbitrations. The most recent revision of these rules was in 2018.

6. Arbitration in Iran

Commercial arbitration in Iran is categorized into two forms: domestic and international.

The Iranian judiciary has, in recent years, pursued a policy of encouraging people to refer their disputes to arbitral tribunals through establishing necessary mechanisms and facilitating recourse to arbitration. On July 10, 2024, the head of the Tehran Court of Justice, Ali Alqasi, highlighted the importance of arbitration in dispute settlement and said, "We are working to establish the necessary mechanism for the operation of arbitration within the country's judicial system."[5]

An official with the Tehran Regional Arbitration Center (TRAC)[6], confirms that the number

1 Available at https://uk.practicallaw.thomsonreuters.com/w-005 4966?transitionType=Default&contextData=(sc.Default)&firstPage=true#:~:text=An%20arbitration%20organised%20and%20administered,the%20auspices%20of%20that%20institution.

2 Available at https://uncitral.un.org/

3 Available at https://drs.cpradr.org/rules/arbitration

4 Available at https://www.cpradr.org/resource-center/rules/arbitration/non-administered/2018-cpr-non-administered-arbitration-rules

5 Available at mehrnews.com/x35pLT

6 TRAC was established under an agreement signed between the Islamic Republic of Iran and AALCO (Asian–African Legal Consultative Organization) on May 3, 1997. The agreement came into force in July 2004, after receiving ratification from the

of commercial disputes submitted to this center for resolution has been on the rise in the past years. In a 2019 interview, he said, "…I should explain that in the last 4 years, TRAC has received considerably more cases than in the previous 10 years. Therefore, I can confirm that a noticeable increase has started in the TRAC caseload as a well-known arbitration institution in the region. In addition, in recent years, TRAC has been more known among Iranian and regional lawyers and business users and we are aware that TRAC arbitration clause has been increasingly inserted in various types of international contracts such as oil and gas services, foreign trade, transport, distribution, banking, export credits, telecommunications, construction and engineering. Therefore, we expect that TRAC caseload would continue to increase in the future."[1]

6.1. Domestic Arbitration

Chapter Seven of the Iranian Code of Civil Procedure deals with the regulations governing domestic arbitration. This code[2], enacted by the Iranian parliament on April 9, 2000, consists of 529 articles and 72 notes. It was subsequently ratified by the Guardian Council on April 16 of the same year. Article 458 of the Civil Code stipulates that "all individuals with the legal capacity to initiate legal proceedings may, by mutual consent, refer their dispute or disagreement, whether or not it has been filed in court, and if filed, at any stage of the proceedings, to the arbitration of one or more arbitrators." Iranian nationals shall submit their dispute to one or more arbitrators, secure a binding decision, and resolve their disputes without going to court as provided by this Article.

6.2. International Arbitration

Article 457 of the Code of Civil Procedure outlines the specific procedures for resolving foreign disputes, noting that in cases where a foreign entity is a party to the dispute, the Parliament's approval is mandatory. It states, "Referral of disputes concerning public or state property to arbitration requires prior approval from the Cabinet of Ministers and subsequent notification to the Parliament. Parliamentary approval is additionally essential in cases where a foreign entity is a party to the dispute or when the subject matter of the dispute is deemed significant by law."[3]

Article 139 of the Constitution of the Islamic Republic of Iran also provides for arbitration, prescribing some degree of formality. It stipulates that "the settlement of disputes concerning public and state property or their submission to arbitration shall require the approval of the Cabinet of Ministers and shall be notified to the Parliament (Majlis). In cases where the party to the dispute is a foreigner and in important domestic cases, the Majlis must also approve (the settlement of the dispute). Important cases are determined by law."[4]

6.3. Iran Law on International Commercial Arbitration (LICA)

As part of efforts to close potential loopholes in international commercial arbitration and modernize the existing provisions, the Iranian Parliament enacted the Law on International Commercial Arbitration (LICA) in 1997. This law officially came into effect on November 5, 1997.

Iranian Parliament (Available at https://rc.majlis.ir/fa/law/show/99688). TRAC effectively commenced its activities a year later, in July 2005, by publishing its Rules of Arbitration.

1 Available at https://arbitrationblog.kluwerarbitration.com/2019/08/16/interviews-with-our-editors-perspectives-on-arbitration-in-iran-from-oveis-rezvanian-director-of-the-tehran-regional-arbitration-centre/

2 Farsi text available at https://rc.majlis.ir/fa/law/show/93305

3 ibid

4 English translation available at https://www.shora-gc.ir/en/news/87/constitution-of-the-islamic-republic-of-iran-full-text

In a paper titled "Iran's Arbitration at a Glance: A Brief Practical Review", Rezvanian and Oladi (2022) provide a historical overview of the development of arbitration in Iran, highlighting the key legal frameworks that have shaped its current system. They write[1], "In 1910, arbitration was introduced to Iran's legal system for the first time through the Law of Trial Principles. Their provisions detailing arbitration, provided a comprehensive legal framework for arbitration proceedings in Iran and became a source of debate among Iranian practitioners and scholars. Accordingly, a subsequent set of principles enacted in 1927 overruled the preceding principles of 1910, with the subsequent principles incorporating a non-final compulsive arbitration. However, as a result of many practical difficulties that ensued, this law was amended a year later and the arbitration provisions were reverted to the previous, up until 1935. The original principles of 1910 contained more comprehensive and practical provisions regarding arbitration, thus it became the basis of Iran's Civil Procedure Code of 1939 (former CPC). Subsequently in 1997, the ratification of the Law of International Commercial Arbitration of Iran (LICA) was momentous for arbitration in Iran, since it distinguished between domestic and international arbitration."

They further note that the development of arbitration in Iran has led to a multi-faceted legal framework, saying that while LICA and the Civil Procedure Code of 2000 serve as the foundation, the rules of arbitral institutions and various substantive laws with arbitration provisions also play significant roles.

In a commentary titled "Reflections on the Status of International Commercial Arbitration in Iran", Mohammadi (2021) outlines the factors that prompted the Iranian Parliament to enact LICA. He writes[2], "…the Act of 1997 was passed in response to deficiencies of the arbitration regulations of the Iranian Code of Civil Procedure and serves as the legal basis for international arbitration. Such deficiencies were related to, inter alia, lack of rules on multilateral arbitration, silence on the jurisdiction of the arbitral tribunal to determine its jurisdiction, silence on the independence of the arbitration clause from the main contract, silence on the principles of due process, challenges to the arbitrator and how to deal with it, silence on how to determine the language of arbitration and the place of arbitration, the limits of the domestic court's authority to intervene in the international arbitration process held in Iran, and finally, the issue of recognition and enforcement of arbitral awards."

Everyone with an inkling legal knowledge is privy to the fact that LICA was enacted to attract foreign investment and stimulate economic growth in Iran by establishing a modern legal framework for resolving international commercial disputes. A key point that needs to be mentioned here is that LICA's full implementation – despite its weaknesses – is expected to have a positive impact on the country's economy as this would guarantee expeditious dispute settlement. Therefore, it is imperative that the government focus on spotting potential obstacles to the arbitration process and clear them.

1 Oveis Rezvanian, Kamyar Oladi 'Iran's Arbitration at a Glance: A Brief Practical Review' (2021), Asian African Legal Consultative Organization (AALCO), p. 41-58 (Available at https://www.aalco.int/journal2020/3.%20Oveis%20Rezvanian%20and%20Kamyar%20(Sajad)%20Oladi-%20VOL.9%20(41-58).pdf)

2 Available at https://www.jurist.org/commentary/2021/10/mehrdad-mohamadi-commercial-arbitration-iran/

6.4. LICA and UNCITRAL

The principles and provisions of the UNCITRAL (The United Nations Commission on International Trade Law) Model Law on International Commercial Arbitration appear to have served as a significant source for drafting the Iranian Law on International Commercial Arbitration.

In a paper titled "The New Law on International Commercial Arbitration in Iran", Jafarian and Rezaian (1998) assert that Iran has adopted the UNCITRAL Model Law on International Commercial Arbitration as the basis for its own domestic law on international commercial arbitration. They write,[1] "A prima facie study of the LICA reveals that the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration has been used as the drafting model of this law, placing the Islamic Republic among those jurisdictions that utilized the Model Law to draft their domestic legislation in the field of international commercial arbitration."

Seyed Hossein Safaei, a professor at the University of Tehran's Faculty of Law and Political Science, advocated for the enactment of an International Commercial Arbitration Law in his article[2], "A Few Words on Innovations and Shortcomings of International Commercial Arbitration Law." He argues, "The existing arbitration provisions within the 1939 Code of Civil Procedure (Articles 632-680), which were derived from the French Code of Procedure, were outdated. These provisions, over six decades old, had failed to keep pace with the substantial advancements in both domestic and international arbitration regulations."

He further states that the Act is a significant step forward for international commercial arbitration in Iran as it provides a modern framework based on international standards, promoting predictability and efficiency in resolving international commercial disputes.

However, Safaei reiterates that the Act "has some shortcomings due to deviations from the UNCITRAL Model Law. There are concerns about potential judicial interference and challenges in the appointment of arbitrators."

Seyed Jamal Seifi[3] in his paper[4] (1998) titled "The New International Commercial Arbitration Act of Iran - Towards Harmony with the UNCITRAL Model Law," provides a comprehensive analysis of LICA, outlining its achievements and shortcomings. He writes, "Iran's International Commercial Arbitration Law appears to be significantly influenced by the UNCITRAL Model Law on International Commercial Arbitration, while also incorporating domestic legal considerations. The Law exhibits two key features: Adoption of International Standards as it has adopted and implements widely recognized principles and practices of international commercial arbitration; and Addressing Domestic Shortcomings as it has rectified deficiencies in Iran's previous arbitration laws, modernizing its legal framework."

He further highlights the Law's strengths, and notes, "The Law places a strong emphasis

1 Mansour Jafarian, Mehrdad Rezaeian 'The New Law on International Commercial Arbitration in Iran' (1998), Kluwer Law International (Available at https://heinonline.org/HOL/LandingPage?handle=hein.kluwer/jia0015&div=28&id=&page)

2 Seyed Hossein Safaei 'A Few Words on Innovations and Shortcomings of International Commercial Arbitration Law' (1999), Law and Political Science Journal (Farsi edition available at https://jflps.ut.ac.ir/article_14180.html)

3 Judge, Iranian Judiciary, 1979-1985; Lecturer in Law, University of Hull, UK, 1989-1991; Asst. Professor of Law, Shahid Behesti (National) University of Iran, 1991-1998; Visiting Professor of Law, University of Hull, UK, 1999-2000.

4 Jamal Seifi 'The New International Commercial Arbitration Act of Iran – Towards Harmony with the UNCITRAL Model Law' (1998), Journal of International Arbitration, vol. 15, issue 2, pp. 5-35 (Available at https://kluwerlawonline.com/journalarticle/Journal+of+International+Arbitration/15.2/JOIA1998010)

on international commercial arbitration, recognizing the validity of a wide range of arbitration agreements, regardless of their form. It grants significant autonomy to the parties and arbitrators to determine the procedural rules and rules of arbitration. The Law explicitly recognizes and encourages institutional arbitration, while also enhancing the enforceability of arbitration agreements. The Law prioritizes the impartiality of arbitrators, regardless of their appointment method, and empowers arbitral tribunals to determine their jurisdiction and the applicable substantive law. It further strengthens the finality, recognition, and enforcement of arbitral awards. However, certain aspects of these reforms may require further clarification and interpretation."

With respect to LICA's limitations and shortcomings, Seifi notes that the new law falls short of providing a comprehensive definition of international commercial relations and instead, it offers a non-exhaustive list of commercial activities, which diverges from the more expansive approach of the UNCITRAL Model Law.

"The Model Law defines the scope of its application by reference to the international nature of the arbitration and outlines specific types of relationships. The new law, however, remains silent on the criteria for determining the international character of a commercial relationship. The law narrowly defines international arbitration, relying solely on the nationality of one of the parties. This contrasts with the more nuanced approach of the UNCITRAL Model Law. The new law excludes individuals with dual Iranian-foreign citizenship from the definition of non-Iranian nationals, potentially limiting the scope of its application. Furthermore, the law's geographic scope remains unclear. While it is implied that the law applies to arbitrations seated in Iran, a more explicit statement would have provided greater clarity. This lack of clarity could potentially lead to uncertainty and confusion," he writes.[1]

Mohammadi[2] (2021) also describes the arbitrability of disputes based on the new Act as a "significant point", and writes, "In this regard, Article 2(2) of the Act establishes that 'any person having legal capacity to file a suit shall be allowed to refer to arbitration his international commercial disputes by mutual consent in accordance with the provisions of this Law whether such disputes have been raised or not in courts, and if raised at whatever stage it could be.' However, paragraph 2 of Article 36 needs to be taken into account, which states that 'the restrictions of other laws regarding the referral of disputes to arbitration must be observed.' Notwithstanding Article 496 of the Code of Civil Procedure of Iran, which prohibits the referral of certain claims to arbitration (namely bankruptcy, marriage, revocation of marriage, divorce, and consanguinity), it should be noted that Article 139 of the Iranian Constitution is an obstacle to recourse to arbitration by Iranian government institutions."

6.5. Strengths and Weaknesses of Iran's Law on International Commercial Arbitration (LICA)

In light of the preceding discussion, the Law's strengths and weaknesses can be outlined as follows. On the one hand, LICA has several strengths, including Modernization, Enhanced International Appeal, Party Autonomy, and Enforcement of Awards. On the other hand, the Law also has certain

1 ibid
2 Available at https://www.jurist.org/commentary/2021/10/mehrdad-mohamadi-commercial-arbitration-iran/

weaknesses, such as a Limited Scope of Application, Potential Judicial Interference, Lack of Clarity on Geographic Scope, and Dual Nationality Issue.

6.5.1. Strengths

6.5.1.1. Modernization

LICA incorporates key principles from the UNCITRAL Model Law, aligning Iran's arbitration framework with international standards. As mentioned earlier, the United Nations Commission on International Trade Law (UNCITRAL) created the International Commercial Arbitration (ICA) Model Law in 1985. This model law helps countries update their legal systems to support international commercial arbitration. The law was revised in 2006. Many countries, including Iran, have implemented their arbitration laws based on this model.

6.5.5.1. Enhanced International Appeal:

The law's modernization has made Iran a more attractive venue for international commercial arbitration.

6.5.2. Party Autonomy

LICA provides for party autonomy, allowing parties to agree on the rules of arbitration, the language of the arbitration, the number of arbitrators, and the venue of arbitration.

For instance, Article 21 of the LICA asserts:

> *"The parties shall agree on the language/s to be used in arbitration proceedings. Otherwise, the "arbitrator" may determine the language/s to be used in arbitration. The agreement of the parties or a decision by the "arbitrator" in this regard shall include any letters of defense, documents and evidences furnished by the parties, deliberations of the investigation proceedings, "arbitrator's" correspondence and issuance of award."*[1]

Another instance is Article 20 (1) which provides for the venue of the arbitration and asserts:

> *"Arbitration shall take place at a mutually agreed venue. In case of lack of agreement, the venue of arbitration shall be determined by the "arbitrator" with due consideration of the circumstances and conditions of the case and easy access for the parties."*[2]

6.5.5.1. Enforcement of Awards

The law provides for the enforcement of domestic and foreign arbitral awards, enhancing the predictability and enforceability of arbitration agreements.

With respect to the enforcement, the Law's Article 35 (2) underlines that "In case one of the parties demands the cancellation of the award from the court mentioned in Article (6) of this Law and the other party demands its recognition or enforcement, the court shall prescribe that the party demanding nullification to deposit an appropriate guarantee provided that the party demanding recognition or enforcement of the judgment requests so."[3]

1 English translation available at www.newyorkconvention.org/media/uploads/pdf/5/7/570_the-law-concerning-international-commercial-arbitration-iran.pdf
2 Ibid, Article 20
3 Ibid, Article 35, 6

6.5.3. Weaknesses

6.5.5.1. Limited Scope of Application

The law's definition of international arbitration is narrower than the UNCITRAL Model Law, potentially excluding certain types of cross-border disputes.

6.5.5.2. Potential Judicial Interference

There are concerns about potential judicial interference in arbitration proceedings, which could undermine the independence of arbitral tribunals.

The reason for the potential judicial interference is that Article 11 asserts that "for the appointment of the members of the board of arbitrators, each party will choose his favorite arbitrator. The elected arbitrators shall then appoint an umpire (a presiding arbitrator). Should one of the parties fail to appoint, within a period of thirty days from the date of commencement of arbitration, his favorite arbitrator or confirm the appointment of his arbitrator, or if the elected arbitrators fail to agree, within a period of thirty days from the date of their appointment, about an umpire, then such appointment of the arbitrator for the abstaining party or the umpire shall be carried out in accordance with the provisions of Article 6 above upon a request by one of the parties, as the case may be."[1]

Article 6 establishes that until an arbitration tribunal is established, the Tehran Public Court will handle these matters, noting that the court's decisions will be definitive and cannot be appealed.

6.5.5.3. Lack of Clarity on Geographic Scope

The law lacks clarity regarding its geographic scope, specifically whether it applies to arbitrations seated outside of Iran.

Article 6 of the Law asserts: "The obligations under Article 9, Clauses 3 and 4; Article 11, Clause 3; Article 13, Clause 1; Article 1; Article 14, Clause 3; and Articles 16, 33 and 35 shall be fulfilled by public courts located in provincial capitals where the seat of arbitration is located. As long as the seat of arbitration has not been determined, such obligations shall be fulfilled by Tehran's public court. The decisions of the court in these instances shall be final and binding.

6.5.5.4. Dual Nationality Issue

The law's treatment of dual nationals may create uncertainties in determining the international character of a dispute.

Article 11 stipulates, "The parties to a dispute shall agree, duly observing the provisions of Clauses 3 and 4 of this Article, on the method of appointment of arbitrators. The Iranian party cannot, as long as a dispute does not occur, bind himself in any manner whatsoever that in case of occurrence of a dispute it shall be resolved by way of arbitration of one or more arbiters or by a board of arbiters, having the same nationality as that of the party to the transaction."

6.6. Arbitration in Iran Constitution

As mentioned above, this research investigates the potential incompatibility between the constitutional requirement of parliamentary approval for foreign disputes involving state assets, as stipulated in Article 139, and the inherently expeditious nature of arbitration. It posits that these

1 Ibid, Article 11

constitutional formalities, while designed to protect national interests, may nonetheless detract from the efficiency and timeliness typically associated with arbitral proceedings.

In a recent paper[1] titled "Article 139 of the Constitution of the I.R. of Iran in light of International Arbitral Decisions and Iran's Reservations to Investment Treaties," Jamal Seifi notes, "The idea of protecting public interests by including specific regulations in private contracts or international treaties has been accepted in some legal systems. Regulations regarding the issuance of permits under Article 139 of the Constitution of the Islamic Republic of Iran are aimed at safeguarding public and state property or referring these claims to arbitration. The case law of international arbitral tribunals over the past forty years indicates that despite the explicit provisions for respecting Article 139 in contracts, international arbitral tribunals have not paid attention to the limitations of Article 139."[2]

> *"Considering that, there is a risk that legal entities of Iranian public law may invoke objections based on Article 139 and given the unsuccessful experience of Article 139 in international commercial arbitrations, it is necessary to revise Iran's approach in this regard to avoid this in the field of investment arbitrations. Firstly, it should be noted that including a reservation related to Article 139 at the time of ratification of investment treaties indicates the validity of the arbitration clause before the issuance of a permit to refer to arbitration by the parliament. This practice conflicts with the approach of the Administrative Court of Justice in its General Board ruling No. 139-138 dated 23/03/1391 [2012], which declared that accepting an arbitration clause by state bodies without obtaining prior permission under Article 139 is contrary to the Constitution and void."*[3]

Seifi further asserts that Article 139 unilaterally imposes a reservation to bilateral treaties, saying, "…there is a consensus among international legal scholars that in bilateral treaties, any imposition of a reservation is considered a counter-offer to the other contracting party. Consequently, in finalizing the text of the treaty, the other party must be informed so that, as the case may be, the possibility of accepting or rejecting it exists. Therefore, reservations related to Article 139 of the Constitution of the Islamic Republic of Iran must necessarily be communicated to the other state during government negotiations and the conclusion of a bilateral investment treaty, and that state's consent to the reservation must be obtained. It should be added that the status of bilateral investment treaties in terms of reservations subsequent to their conclusion is completely different from multilateral treaties. In other words, in multilateral treaties where reservations are permitted, including a reservation during the ratification of treaties by the legislative body is an acceptable matter and, depending on whether it is subsequently objected to, will be subject to the regulations on reservations in treaty law. In bilateral treaties, the principle of treaty integrity prevails, and including a reservation during its ratification without informing

1 Jamal Seifi, "Article 139 of the Constitution of the I.R. of Iran in light of International Arbitral Decisions and Iran's Reservations to Investment Treaties" (2024), Tehran University Public Law Journal, p. 203-234. (Available at https://jplsq.ut.ac.ir/article_88131_622f52ad46739c49a5e2b95060ded9c6.pdf)
2 Ibid, p. 229
3 Ibid, p. 229-230

the other state is a completely unconventional matter, unless it is explicitly and subsequently communicated to the other member states and accepted by that state."[1]

In his piece, he provides several examples to substantiate his assertion, two of which concern disputes brought by foreign firms against Iranian state companies. They are as follows:

6.6.1. Gatoil International Inc v. National Iranian Oil Company [2]

In April 1982, the National Iranian Oil Company (NIOC) and Gatoil International entered into a series of contracts for the purchase and sale of oil. "Section 8 of the written contract provided that the parties would refer any disputes to arbitration in accordance with the laws of Iran. Section 8 also provided that the party that initiated the arbitration would nominate one arbitrator, while the other party would nominate a second arbitrator. The two arbitrators would then appoint a third arbitrator; the President of the Appeal Court in Iran would appoint the third arbitrator if the two arbitrators could not reach an agreement. Section 8 also provided the arbitration would occur in Tehran."[3]

In 1987, Gatoil filed a lawsuit in a London court, alleging that NIOC had failed to deliver 44 million barrels of oil and seeking $108 million in damages. However, because the contracts contained an arbitration clause, NIOC asked the London court to stay the proceedings and refer the dispute to arbitration. The London court, relying on English arbitration law and the New York Convention, granted NIOC's request and referred the case to arbitration. Gatoil then argued that the arbitration agreement was invalid under Iranian law, citing Article 139 of the Iranian Constitution, which requires parliamentary approval for the arbitration of disputes involving state-owned assets. However, the London court rejected this argument, ruling that Gatoil should have sought the necessary parliamentary approval before challenging the arbitration agreement. The Court of Appeal in London upheld the lower court's decision, confirming that Gatoil was bound by the arbitration agreement.[4]

In a similar case, the International Court of Arbitration of the Paris Chamber of Commerce[5] also rejected a similar argument raised by Gatoil, further solidifying the principle that state-owned enterprises cannot avoid arbitration agreements by invoking domestic laws that require parliamentary approval.[6]

6.6.2. Westinghouse Electric Corporation v. Iran Ministry of Defense[7]

Between 1971 and 1978, the Iranian Ministry of Defense and Westinghouse, an American company, entered into a series of contracts to purchase and install advanced radar systems. One of these contracts included an arbitration clause, agreeing to resolve any disputes through international arbitration. In October 1991, Westinghouse filed a lawsuit[8] against the Iranian

1 Ibid, p. 230-231
2 Ibid, p. 219-221
3 Available at https://www.quimbee.com/cases/gatoil-international-v-national-iranian-oil-co
4 Jamal Seifi, "Article 139 of the Constitution of the I.R. of Iran in light of International Arbitral Decisions and Iran's Reservations to Investment Treaties" (2024), Tehran University Public Law Journal, p. 220-221.
5 French edition available at https://arbitrationlaw.com/library/paris-court-appeal-1st-chamber-%E2%80%93-section-c-17-december-1991-soci%C3%A9t%C3%A9-gatoil-international
6 Jamal Seifi, "Article 139 of the Constitution of the I.R. of Iran in light of International Arbitral Decisions and Iran's Reservations to Investment Treaties" (2024), Tehran University Public Law Journal, p. 221.
7 Ibid, p. 221-223
8 Available at https://jusmundi.com/en/document/decision/en-westinghouse-electric-corporation-v-the-islamic-republic-of-

Ministry of Defense in a London court, alleging a breach of contract. The Ministry of Defense, relying on the arbitration clause, requested that the London court stay the proceedings and refer the dispute to arbitration. The London court granted the Ministry of Defense's request and referred the case to arbitration. Westinghouse then argued that the arbitration agreement was invalid under Iranian law, citing Article 139 of the Iranian Constitution, which requires parliamentary approval for the arbitration of disputes involving state-owned assets.[1]

The international arbitral tribunal rejected Westinghouse's argument, concluding that Article 139 of the Iranian Constitution did not invalidate the arbitration agreement. Citing international case law, particularly a similar case decided by the Paris Court of Appeal, the tribunal held that a party cannot rely on domestic law to avoid an arbitration agreement once it has been entered into. The tribunal emphasized that the purpose of international arbitration is to facilitate international trade and provide parties with a neutral forum for dispute resolution. Allowing a party to avoid an arbitration agreement based on domestic restrictions would undermine this purpose.[2]

Apparently, arbitration in Iran still faces certain limitations and challenges, including those prescribed by Article 139 of the Constitution. It should be noted that Article 139 correctly mandates parliamentary approval for the arbitration of disputes concerning state properties. However, it seems that the formalities stipulated by the Article are against the nature of arbitration which is meant to be expeditious and to avoid the time and expense associated with proceeding in court. As rightly noted above, Iran needs to revise its approach and here the Guardian Council can play a key role by streamlining the arbitration process and fostering a more efficient dispute resolution process. In fact, a streamlined approach can be achieved by reducing unnecessary formalities and promoting a more supportive framework for arbitration. While courts operate within a well-defined system of rules and procedures, arbitration tribunals enjoy greater flexibility, allowing for more tailored and efficient dispute resolution.

Conclusion

The 1997 enactment of Iran's International Commercial Arbitration Law (LICA) represents a major development in the modernization of the legal framework governing international commercial disputes within the Islamic Republic of Iran. By incorporating key principles of the UNCITRAL Model Law, LICA holds the potential to enhance the predictability, efficiency, and enforceability of arbitral awards despite certain weaknesses. However, the realization of this potential is constrained by existing constitutional and procedural impediments, specifically Articles 139 of the Constitution and 457 of the Code of Civil Procedure, which mandate parliamentary approval for arbitral awards involving foreign entities. This requirement urges a procedural formality that stands in contrast to the inherent flexibility and expeditious nature of international commercial arbitration, posing a substantial risk of discouraging foreign investment due to potential protracted delays. This analysis posits that the Iranian Constitution does not necessarily preclude the efficacy

iran-the-islamic-republic-of-iran-air-force-iran-air-ministry-of-water-power-shahpur-chemical-co-ltd-also-known-as-razi-chemical-co-iranians-bank-final-award-award-no-579-389-2-wednesday-26th-march-1997

1 Ibid p. 221-222

2 ibid

of arbitration provisions. Furthermore, it argues that the Guardian Council has the authority to streamline arbitral procedures within the existing legal framework of the Islamic Republic. While a degree of procedural structure is undeniably necessary for any dispute resolution mechanism, the current system's emphasis on parliamentary approval undermines arbitration's fundamental capacity to adapt to the unique exigencies of the parties involved. To fully realize LICA's objectives and foster a more favorable environment for international commercial arbitration in Iran, a streamlined approach—facilitated by the Guardian Council upon inquiries by relevant authorities—is essential. Strategies for reducing formalities, while important, fall beyond the scope of the present article and can be discussed elsewhere.

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Book Review: Selected Writings on International Law, Adjudication and Arbitration (Volumes I & II) by Jamal Seifi

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ABSTRACT

The two-volume book, Selected Writings on International Law, Adjudication and Arbitration, by Dr. Seyed Jamal Seifi, a distinguished international arbitrator, and a Member of the Iran-United States Claims Tribunal since 2009, compiles articles published by Judge Seifi over three decades in various Iranian legal journals. The author who has also been a Visiting Professor at the University of Hull, UK (1999 and 2000), Professor of Global Law Chair (for 2015) and Distinguished Visiting Professor at Tilburg University, Netherlands (2016-2021), Member of Faculty of Law, Shahid Beheshti University, has had an equally distinguished academic career in teaching and research of international law and arbitration. Volume 1, published in 2023, contains twelve articles divided into three sections: Arbitration (4 articles), the International Court of Justice (4 articles), and the Substance of International Law (4 articles). Volume 2, published in 2024, includes eight older articles from 1994 to 2011, organized into two sections: International Arbitration and Adjudication (4 articles), and the Substance of International Law (4 articles). The articles reflect Judge Seifi's dual expertise in international arbitration and public international law, addressing such topics as the evolution of arbitration, the role of the International Court of Justice, investment arbitration, and contemporary issues in international law, including State sovereignty and the legal regime of the Caspian Sea. The review highlights the enduring relevance of these articles, particularly in light of recent developments in international law, and underscores their contribution to the relevant scholarship. The collection serves as a valuable resource for enriching the knowledge of members of the legal community in Iran regarding the intersection of international arbitration, adjudication, and public international law.

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Introduction

The treatise *Selected Writings on International Law, Adjudication and Arbitration* (Volumes I & II), published in Persian by *Shahr-e Danesh* in 2023 and 2024, comprises a curated collection of articles authored by the distinguished jurist Jamal Seifi—*inter alia*, a member of the Iran-United States Claims Tribunal, Judge *ad hoc* for Iran before the International Court of Justice in the *Case Concerning Alleged Violations of State Immunities*,[1] and former professor at Tilburg University (Netherlands), the University of Hull (UK), and Shahid Beheshti University (Iran). These scholarly contributions were originally disseminated in Iranian legal periodicals over the course of three decades.

Given the author's dual engagement in the international arbitral and judicial fora, supplemented by his expertise in both public international law and international arbitration, the eclectic thematic range of his oeuvre is scarcely surprising.

Volume I (2023) encompasses twelve articles grouped into three rubrics: Arbitration (4 articles), the International Court of Justice (4 articles), and Substantive Issues in International Law (4 articles). This volume predominantly features the author's recent scholarship, published within the last decennium. Conversely, Volume II (2024) assembles earlier articles (circa 1994–2011), categorized under two headings: International Arbitration and Adjudication (4 articles) and Substantive Issues in International Law (4 articles).

To ensure thematic consistency, this review adopts a consolidated approach, analyzing the articles by subject matter rather than seriatim by volume. Within each rubric, articles from Volume I are addressed first, followed by those from Volume II. Thus:

Part I ("International Arbitration") subsumes seven articles.

Part II ("The International Court of Justice") examines five articles, primarily drawn from Volume I. A singular article from Volume II—*State Succession in the Dissolution of the Socialist Federal Republic of Yugoslavia in light of the European Community Arbitration Commission's Opinions and the ICJ's Provisional Measures Order of 8 April 1993 in the Bosnia-Herzegovina Case*—is included herein due to its thematic pertinence.

Part III ("Substantive Issues in International Law") discusses eight articles.

1 *Alleged Violations of State Immunities (Iran v Canada)* ICJ Case Concerning [2023].

1. International Arbitration

The first section of both volumes is devoted to *international arbitration*. The section on international arbitration in Volume I comprises four articles.

The first article in Volume I (*Essay One*), titled "Arbitration and the Peaceful Settlement of International Disputes," was published in 2013 in Issue 24 of the *Journal of Legal Research*. It is a translation of the author's address at the Ministerial Conference on the Peaceful Settlement of Disputes, delivered on 28 August 2013 at the *Peace Palace in The Hague* to commemorate the centenary of the Palace's inauguration. The lecture was structured in three parts: *i)* the Universality and Continuity of International Arbitration; *ii)* the 1899 and 1907 Hague Peace Conferences and the Institutionalization of International Arbitration; and *iii)* the Current State of Arbitration: Its Successes and Failures.

Notably, the author observes in the second section that the Hague Conferences were convened at a time when international law lacked any established prohibition on the use of force in inter-State relations. Consequently, their objective was to provide an effective alternative to armed conflict in international affairs. This is reflected in Article 1 of the 1899 Hague Convention for the Pacific Settlement of International Disputes (which also serves as the founding instrument of the Permanent Court of Arbitration), which stipulates:

> *"With a view to obviating, as far as possible, recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to insure the pacific settlement of international differences."*

The author's emphasis on pacifism and the elimination of force as the cornerstone of international arbitration (addressed in Articles 15 et seq. of the Convention) is particularly significant. Over the past decade, many prominent scholars have evaluated arbitral institutions like the Iran-United States Claims Tribunal through the lens of the ideal of "arbitrating for peace."[1]

Moreover, the author highlights that Article 15 of the Convention defined international arbitration in a manner that reflects both its legal and consensual nature:

> *"International arbitration has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law."*

At the same time, the author stresses that the rule of law presupposes the existence of clearly defined and stable legal principles. He notes that at the dawn of the 20th century, international law was in its infancy: treaty-based rules were scarce, and the content of customary international law remained nebulous. This ambiguity inevitably cast doubt on the objectivity implied by the phrase "on the basis of respect for law" in Article 1.

In this regard, the author cites Elihu Root, who, upon receiving the 1912 Nobel Peace Prize, remarked:

1 See Böckstiegel K-H, 'The Iran-United States Claims Tribunal: A Unique Example of Arbitrating for Peace' in Ulf Franke and Annette Magnusson (eds), *Arbitrating for Peace: How Arbitration Made a Difference* (Kluwer Law International 2016) ch 6; Simma B and Ortgies J, 'The Iran-United States Claims Tribunal' in Chiara Giorgetti (ed), *Research Handbook on International Claims Commissions* (Edward Elgar 2023) ch 4.

> *"Where there is no law, a submission to arbitration or to judicial decision is an appeal, not to the rule of law, but to the unknown opinions or predilections of the men who happen to be selected to decide."*[1]

The third section of the article evaluates the current state of international arbitration. The author notes that the Permanent Court of Arbitration (PCA), as the most significant institutional achievement of the First Hague Peace Conference, successfully established itself as a trusted forum in its early decades, administering twenty cases. However, after the establishment of the Permanent Court of International Justice (PCIJ), inter-State dispute resolution gradually shifted away from the PCA, leading to its decline until the 1990s.

The post-Cold War era and the proliferation of bilateral and multilateral investment treaties (BITs/MITs)—all featuring arbitration clauses—precipitated a dramatic resurgence in arbitral proceedings and revitalized the PCA. The author argues that much of modern arbitration's appeal lies in the principle of party autonomy, which introduces a pluralistic and democratic element absent in judicial dispute resolution. This flexibility also permits greater diversity in the legal and cultural backgrounds of arbitrators.

In sum, this article makes a substantive contribution to the literature by examining international arbitration from two distinct perspectives:

1. Its role in advancing "arbitrating for peace" and the prohibition of the use of force.
2. The democratic character of arbitration, emphasizing party autonomy and cultural diversity among arbitrators.

Essay Two, "Article 139 of the Iranian Constitution in Light of International Arbitral Awards and Iran's Investment Treaty Reservations," published in 2024, examines the unsuccessful attempts by Iranian State-owned entities to invoke Article 139 of the Iranian Constitution—which restricts arbitration referrals—to challenge the jurisdiction of international commercial arbitral tribunals. The author warns that similar failures may recur in investment arbitration unless addressed.

A notable innovation is the author's categorization of Iran's BITs based on how they interact with Article 139. The article's unique contribution lies in its dual focus on both commercial and investment arbitration, a departure from prior scholarship on the subject.

Essay Three, "The Clean Hands Doctrine in International Investment Arbitration", published in 2016 in the inaugural issue of the Iranian Yearbook of Arbitration, examines how the clean hands doctrine, long established in public international law within the framework of diplomatic protection, is transcending its traditional boundaries and entering the realm of international investment arbitration. The innovative aspect of the article lies in its examination of developments in investment arbitration from two distinct perspectives. In the first section, through case studies of *Inceysa*[2] and *Fraport*,[3] the author notes that fraudulent violations of host country laws in acquiring investments will remove such investments from the scope of

1 See Root E, *Nobel Lecture* (1912) https://www.nobelprize.org/prizes/peace/1912/root/lecture/ accessed 15 July 2024

2 *Inceysa Vallisoletana, S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, August 2, 2006.

3 *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines*, ICSID Case No. ARB/11/12, Award, December 10, 2014.

protection granted by investment treaties. In the second section, which focuses on the fraudulent acquisition of treaty coverage after or on the verge of a dispute arising, the discussion centers on the artificial transformation of pre-existing or imminent domestic disputes into disputes covered by investment treaties. In this section, through case studies of *Phoenix*[1] and *Levy*,[2] the author observes that in these cases, due to the artificial conversion of domestic disputes into international disputes to obtain treaty coverage, the arbitral tribunals, having established a violation of the *principle of good faith* by the claimants, declared themselves incompetent to hear the claims. In sum, while emphasizing the permissibility of acquiring treaty coverage "before" a dispute arises as affirmed by the arbitral tribunal in *Tokios Tokelės*,[3] the author's innovative analysis of investment arbitral tribunals' approaches to violations of the *clean hands doctrine* from two different perspectives undoubtedly enriches the legal literature on the subject.

Essay Four, "A Preface to the 2012 PCA Arbitration Rules," was published in 2014 in a collection commemorating the tenth anniversary of the establishment of the Iran Chamber of Commerce Arbitration Center, with the aim of conveying the author's experience as a member of the "Drafting Committee" for the 2012 PCA Rules. The article discusses the objectives and process of drafting the 2012 PCA Arbitration Rules, particularly the complexities arising from consolidating the four previous sets of arbitration rules into a single document, as well as the salient features of the 2012 Rules resulting from their updating in light of new developments. The author first notes that following the gradual revival of the PCA's activities in the 1990s, the Court adopted four optional arbitration rules as follows: *i)* the 1992 Optional Rules for Arbitrating Disputes between Two States; *ii)* the 1993 Optional Rules for Arbitrating Disputes between Two Parties of Which Only One is a State; *iii)* the 1996 Optional Rules for Arbitration Between International Organizations and States; and *iv)* the 1996 Optional Rules for Arbitration Between International Organizations and Private Parties. As mentioned in the preamble to the 2012 Arbitration Rules, the four previous sets of arbitration rules remain valid, and the purpose of adopting the new rules, which were prepared based on the 2010 UNCITRAL Arbitration Rules, was merely to expand the range of arbitration rules available at the PCA. Additionally, the author's membership on the *Drafting Committee* for the 2012 Arbitration Rules enabled him to be closely involved in discussions concerning the updating and consolidation of the previous rules and to participate actively in drafting the 2012 Rules. Subsequently, the author explains the salient features of the 2012 Arbitration Rules manifested in four areas: *i)* provisions on immunity; *ii)* the discretionary rule regarding the composition of the arbitral tribunal; *iii)* the enhanced role of the PCA Secretary-General as appointing authority; and *iv)* the stipulation of the primacy of international law in disputes between States. Overall, through its detailed examination of issues related to the updating and consolidation of the PCA's Arbitration Rules, this article holds a unique position in the legal literature concerning the PCA.

Similarly, the first section of Volume II of the collection is also devoted to *International Arbitration and Adjudication*. This section contains four articles, the last of which relates to the ICJ and is therefore examined in the second section. The first article in Volume II ("Essay One"),

1 *Phoenix Action, Ltd. v. Czech Republic*, ICSID Case No. ARB/06/5, Award, April 15, 2009.
2 *Renee Rose Levy and Gremcitel S.A. v. Republic of Peru*, ICSID Case No. ARB/11/17, Award, January 9, 2015.
3 *Tokios Tekeles v. Ukraine*, ICSID Case No. ARB/02/18, Decision on Jurisdiction, April 29, 2004.

entitled "Iran's International Commercial Arbitration Act in Harmony with the UNCITRAL Model Law," is a translation of the original article published in English in Volume 15, Issue 2 (June 1998) of the *Journal of International Arbitration*. Published shortly after the adoption of Iran's Law on International Commercial Arbitration (LICA), this article aimed to introduce the innovations of this law, enumerate instances where it was influenced by or adopted from the UNCITRAL Model Law, and highlight its points of divergence from the Model Law. Prior to the adoption of the new law, the arbitration provisions in Chapter 8 of Iran's 1939 Code of Civil Procedure governed both domestic and international arbitrations. These provisions suffered from numerous deficiencies in terms of their conformity with modern international arbitration rules and standards. Therefore, the enumeration of flaws in the arbitration rules under the Code of Civil Procedure and the reforms introduced by the LICA to address them in international arbitrations are significant, and their detailed examination is essential for understanding various aspects of the modernization of Iran's arbitration laws to achieve greater conformity with modern international arbitration standards. For example, the Code of Civil Procedure contained no provision on the independence of arbitration clauses from the underlying contract. By contrast, Article 16(1) of the LICA, like Article 16(1) of the UNCITRAL Model Law, recognizes the principle of the independence of the arbitration clause and provides that for the purposes of this law, an arbitration clause shall be treated as an independent agreement, and a decision by the arbitrators that the contract is null and void shall not entail *ipso facto* the invalidity of the arbitration clause in the contract. Furthermore, through its detailed analysis of this law, the article seeks to demonstrate that the adoption of Iran's LICA was a major step in developing and modernizing Iran's arbitration regulations and harmonizing them with the requirements of commercial arbitration. This article remains one of the most important and comprehensive works by Iranian authors in explaining the innovations of Iran's LICA, and its English version in particular has been frequently cited by arbitration practitioners.

Essay Two, "Developments, Issues, and Prospects of International Arbitration in Iran," published in 2001 in Issue 172 of the *Journal of the Iranian Bar Association*, constitutes a translation of the author's address delivered at the 2000 Amsterdam Conference of the International Bar Association during the joint session of the Arbitration Committee and the Regional Arab Forum under the theme "Developments, Issues, and Prospects of Arbitration in the Middle East." It remains evident to scholars that despite the enactment of Iran's new Code of Civil Procedure (CCP) several months prior to the author's address (the *Code of Civil Procedure for General and Revolutionary Courts*, adopted in 2000), the arbitration provisions in Chapter Seven of the new law differ little in substance from those of the 1939 legislation. The author accordingly emphasizes that the Iranian legislature, in adopting the new CCP, took only minimal steps toward reforming the arbitration provisions of the 1939 law. While briefly examining the shortcomings of the arbitration rules under the CCP and the corresponding reforms introduced by the LICA to address them in international arbitrations, the article further notes that the arbitration provisions of the new CCP do not abrogate those of the LICA, as the latter constitutes *lex specialis* applicable solely to international commercial arbitration. The article further observes that Iran's accession to the *1958 New York Convention on the Recognition*

and Enforcement of Foreign Arbitral Awards should be considered the next essential step toward aligning with modern international arbitration standards. In other words, the adoption of the *LICA* without acceding to the New York Convention would remain an incomplete endeavor. Notably, this accession materialized shortly after the delivery of the address.

Essay Three, "The Significance of Institutional Arbitration in International Commercial Disputes," published in 2004 in the inaugural issue of *Arbitration Quarterly* by the Arbitration Center of Iran Chamber of Commerce (ACIC), reproduces the author's lecture at the conference on *Commercial Arbitration in National and International Contexts* held on 23 September 2003. At that time, with the establishment of the ACIC under the *Act on Statute of Arbitration Center of Iran Chamber* adopted on 3 February 2002, the evolution of arbitration rules in Iran had entered a new phase marked by the explicit recognition and institutionalization of administered arbitration. The article thus sought to provide a scholarly foundation for this institutionalization process. The discussion encompasses the legal nature of institutional arbitration, its characteristics and advantages, the standing of major international commercial arbitration institutions, and the prospects for institutional arbitration in Iran. In particular, the article examines the legal framework of the *International Chamber of Commerce (ICC) International Court of Arbitration* and its constituent organs as the preeminent model of institutional arbitration, highlighting the importance of the *Terms of Reference* in managing arbitral proceedings under the ICC system. These observations were intended to inform the subsequent drafting of the Arbitration Rules for the ACIC. Furthermore, given the distinction between the *lex arbitri* of the seat and the procedural rules of an arbitral institution, the article stresses the urgency of promptly finalizing the Arbitration Rules for the ACIC, as the operational standards of an arbitral institution are fundamentally defined by its own procedural framework. These deliberations ultimately contributed to the drafting process that culminated in the adoption of the *Arbitration Rules of the ACIC* in 2007, in which the author played an active role.

2. The International Court of Justice

The second section of Volume I is dedicated to the ICJ. While Volume II does not contain a separate section on the ICJ, it includes one relevant article at the conclusion of its first section under the comprehensive title "International Arbitration and Adjudication." To maintain thematic coherence, this article - entitled "State Succession in the Dissolution of the Socialist Federal Republic of Yugoslavia in Light of the European Community Arbitration Commission's Opinions and the ICJ's Provisional Measures Order of 8 April 1993 in the Bosnia-Herzegovina Case" - will be examined at the end of this section following the review of Volume I's articles.

Essay Five of Volume I, "The International Court of Justice as the Principal Judicial Organ of the United Nations," published in 2010 in the collected papers of the conference on "The Role of the International Court of Justice in the Development and Codification of International Law," examines the institutional and legal implications of the ICJ's unique status as the principal judicial organ of the UN, which distinguishes it from other international judicial bodies. The author first addresses the Court's position within the UN institutional framework, noting that its designation as a principal organ (unlike its predecessor, the PCIJ) implies that all principal UN

organs constitute components of a unified system sharing common objectives, though operating independently to achieve them. The author observes that the absence of compulsory jurisdiction places the Court in a distinct position relative to other executive and parliamentary UN organs. While Article 94(2) of the UN Charter provides for Security Council recourse to enforce ICJ judgments, the author cautions against overlooking the inherent limitations arising from the political considerations influencing Security Council actions. In discussing the powers and jurisdiction deriving from the Court's status, the author highlights its competence to interpret the Charter, noting this carries potential for informal oversight of other UN organs' decisions. The analysis references the *Lockerbie* case, where the Court adopted a conservative approach by avoiding implicit judicial review of Security Council resolutions 731 and 748.

Essay Six, "Cultural Diversity of Arbitrators and Judges in International Arbitration and Adjudication," published in 2023 in the *Journal of Comparative Research on Islamic and Western Law*, reflects the lived experience of a Global South jurist confronting the increasingly significant issue of cultural diversity in international arbitration and adjudication. The article's innovative approach lies in its distinct perspective on diversity, diverging from predominant Western discourse by focusing on the underrepresentation of Global South jurists rather than the current emphasis on gender diversity. The author makes the point that cultural diversity in international arbitration should be viewed as an opportunity to enhance the institution's legitimacy, given arbitration's inherently multicultural and multinational character. This perspective was further developed in the author's English-language publications aimed at international audiences, including a recent Oxford University Press volume advocating for greater participation of Global South arbitrators in investment disputes.[1] The analysis extends to ad hoc judges under ICJ Statute Article 31, where cultural diversity contributes to the Court's judicial legitimacy.

Essay Seven, "The ICJ's Oil Platforms Judgment: Judicial Diplomacy in International Adjudication," published in 2003 in the *Journal of Legal Research* following the ICJ's November 2003 merits judgment in Iran's case against the United States, examines the Court's jurisprudential innovation in navigating jurisdictional constraints (Iran having invoked the 1955 US-Iran Treaty of Amity as sole jurisdictional basis) while nonetheless incorporating significant findings regarding the US's breach of general international law and unlawful use of force against Iranian oil platforms. The analysis focuses on the Court's reasoning: while determining the attacks of 19 October 1987 and 18 April 1988 did not impede freedom of commerce under Article X(1) of the Treaty, the Court declined to justify them under Article XX(1)(d) (measures necessary to protect essential security interests) when examined against international law on the use of force. The author highlights the Court's judicial diplomacy in reversing the conventional analytical sequence - by addressing justifications before establishing violations - thereby permitting its significant finding that the attacks constituted unlawful use of force without meeting self-defense criteria under international law. This approach enabled the Court to emphasize the relationship between "essential security interests" and the general international law on the use of force. The Court thus found that the actions carried out by United

1 Seifi SJ, 'Legitimacy of Investor-State Arbitration: Addressing Development Bias Among International Arbitrators' in Freya Baetens (ed), *Identity and Diversity on the International Bench: Who is the Judge?* (Oxford University Press 2020) 164-178.

States forces against Iranian oil platforms constituted recourse to armed force not qualifying as acts of self-defense, and thus cannot be justified as measures necessary to protect the essential security interests of the United States under Article XX(1)(d) of the 1955 Treaty of Amity.

Essay Eight, "Reflections on Iran's Cases before the International Court of Justice," was published in 2003 in the *Journal of Legal Research*. At the time of writing, Iran had been the respondent in two cases brought by the governments of the United Kingdom and the United States, while also initiating two cases against the United States as the applicant. It should be noted that given the timing of the article's publication, it does not cover Iran's more recent cases against the United States filed in 2016 and 2018 concerning violations of Iran's jurisdictional and enforcement immunities by U.S. courts and the reimposition of economic sanctions following the U.S. withdrawal from the JCPOA agreement, which allegedly violated the 1955 Treaty of Amity between the two countries and are currently pending before the Court. However, this omission does not diminish the validity of the article's central argument, and indeed, these recent cases provide further evidence supporting the author's thesis regarding Iran's evolving approach to international law and institutions, resulting in resorting to the ICJ to protect the rule of law in international affairs. The article essentially traces Iran's shifting attitude toward international law and international political and judicial organizations, particularly in the post-1979 Revolution period. It describes how Iran moved beyond an initial phase of distrust and skepticism toward international law and institutions - as exemplified by the Hostage Crisis case - to develop a new approach that recognizes the rule of law in international society and actively pursues cases before the ICJ to uphold this principle, a trend that continues to the present day.

I now turn to the sole article in Volume II that addresses the ICJ. Essay Four of Volume II: "State Succession in the Dissolution of the Socialist Federal Republic of Yugoslavia in Light of the European Community Arbitration Commission's Opinions and the ICJ's Provisional Measures Order of 8 April 1993 in the Bosnia-Herzegovina Case" was published in 1994 in Issues 13-14 of the *Legal Research Journal* under the "International Judicial Practice" section. In the introduction, the author explains that the motivation for writing this article in the early 1990s was to examine the legal aspects surrounding the declarations of independence issued by most republics of the Socialist Federal Republic of Yugoslavia, as well as the violent events that occurred during the country's dissolution process, particularly in connection with Bosnia-Herzegovina's declaration of independence as one of the six constituent republics. These events led to interventions by the European Community, the Security Council, and the ICJ. The first part of the article analyzes both the Opinions of the European Community Arbitration Commission (the Badinter Commission) regarding the legitimacy of independence declarations issued by the republics of Slovenia, Croatia, Bosnia-Herzegovina, and Macedonia, and their impact on the continued legal existence of the Socialist Federal Republic of Yugoslavia, along with relevant Security Council resolutions adopted during this period. The second part examines the simultaneous application by the Bosnian government to the ICJ to bring a case against the Federal Republic of Yugoslavia (comprising Serbia and Montenegro). At the beginning of this section, it is noted that despite the Security Council's inability to stop the war in Bosnia-Herzegovina, the Bosnian government on 20 March 1993, amid ongoing Security Council actions, instituted

proceedings at the ICJ concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide by the Federal Republic of Yugoslavia, requesting that the Court issue provisional measures ordering the cessation of all acts of genocide against the people of Bosnia-Herzegovina before considering the merits of the case. At the time of the article's publication, the only notable development had been the Court's provisional measures order of 8 April 1993 calling for an end to genocide and crimes in the territory of Bosnia-Herzegovina, and this development and its legal consequences are analyzed in the article. In this regard, considering that the Court based its preliminary jurisdiction determination on Article 35(2) rather than Article 35(1) of its Statute, the author concludes that this indicates the Court's serious doubts about the continued legal personality of the former Yugoslavia. Subsequent developments in later years in fact confirmed the doubts that the author, inferring from the Court's approach, had expressed in this article regarding the continuation of the former Yugoslavia's legal personality. This became clear when the Federal Republic of Yugoslavia (comprising Serbia and Montenegro) finally on 27 October 2000, by formally accepting the Security Council and General Assembly decisions declaring the dissolution of the Socialist Federal Republic of Yugoslavia, submitted its application to join the United Nations as a new member. Ultimately, the Federal Republic of Yugoslavia was admitted as a new member of the United Nations in 2001.

3. The Substantive Issues of International Law

The third and final section of Volume I is devoted to *the substance of international law*, comprising four articles.

The first two articles in this section (Essays Nine and Ten) examine developments concerning the legal regime of the Caspian Sea in two distinct periods—before and after the dissolution of the Soviet Union—with particular emphasis on post-dissolution developments. Both were published in 2022.

The first article, after briefly reviewing the legal regime of the Caspian Sea prior to the Soviet Union's collapse, focuses primarily on the issue of State succession. In contrast, the second article centers on matters related to the 2018 Aktau Convention on the legal status of the Caspian Sea. The author explains that both articles were initially conceived under the overarching title "The Legal Regime of the Caspian Sea: Past, Present, and Future," with intended subtitles of "The State Succession Framework" and "The Aktau Convention (2018)," respectively. Ultimately, however, a shared subtitle was adopted for both parts: "From State Succession to the Adoption of the Aktau Convention (2018)."

Thus, the first article evaluates the positions and analyses presented by Iranian authorities and scholars regarding the effects of State succession on the 1921 and 1940 treaties between Iran and the Soviet Union, particularly in terms of establishing a comprehensive and desirable legal regime for the Caspian Sea. The second article, meanwhile, examines the drafting process, provisions, and implications of the Aktau Convention from the perspective of general principles and norms of international law.

The author argues that three decades after the dissolution of the Soviet Union and the

emergence of new littoral States (or, more precisely, the recognition of the Russian Federation as the State continuing the international legal personality of the Soviet Union, and the appearance of Azerbaijan, Turkmenistan, and Kazakhstan as successor States), it is an opportune moment to reflect on the evolution of legal positions and realities over the past thirty years. Of particular significance are developments such as the bilateral delimitation agreements concerning the Caspian seabed and subsoil in the northern sector, which, by creating tangible facts on the ground, effectively accelerated the process leading to the 2018 Aktau Convention.

Like the preceding two essays, Essay Eleven, titled "Renvoi to Domestic Law in Public International Law: A Review in Light of Recent Judicial and Arbitral Decisions," was published in 2022. Approaching the issue from the perspective of public international law, this article not only revisits the traditional view of domestic law as a factual matter but also elucidates two more recent approaches adopted by international judicial and arbitral bodies when engaging with domestic legal systems.

The first approach involves referencing domestic law not for the direct application of a specific legal system's rules to the case at hand, but rather to identify the prevailing common rule among legal systems on matters where international law provides no clear guidance. In contrast, the second approach entails applying domestic law directly as the governing law for certain aspects of an international dispute. The significance of these two contemporary approaches, particularly in light of their application in numerous investment arbitration awards, is well recognized among scholars.

Finally, Essay Twelve, titled "Treaty Interpretation Over Time and the Doctrine of Intertemporal Law," was published in 2012 in a commemorative volume honoring Professor Mohammad Reza Ziaei Bigdeli. As is typical for such collections, this article is not as extensive as the previous three. Nevertheless, it engages with a highly technical discussion concerning the complexities of treaty interpretation over time—or the evolutive interpretation of the meaning of terms and phrases used in international treaties.

The concept of evolutive interpretation in international law has undergone significant developments since Max Huber's famous invocation of "intertemporal law" in the 1928 Island of Palmas arbitration. The article highlights contemporary applications of this doctrine, including instances where generic terms in international legal instruments are given dynamic meanings, drawing on recent examples from the jurisprudence of the WTO Appellate Body and international arbitral awards.

Similarly, the second section of Volume II is devoted to the substance of international law and likewise comprises four articles. The first article in this section, Essay Five, titled "The Unity of 'Contractual and Non-Contractual' International Responsibility and Its Effects on the Law of Treaties", was published in 1994 in Issues 13-14 of *Legal Research Journal*, in the research section. As explained at the outset, the article did not intend to delve into detailed discussions about the unity or duality of contractual and tortious responsibility, nor to examine arguments for and against these two perspectives in private law. Rather, its primary objective was to demonstrate that, contrary to what might initially be assumed by drawing

analogies from domestic legal classifications, international law maintains a unified system of responsibility encompassing both treaty-based and non-treaty-based obligations.

Given that the concept of State criminal responsibility had been introduced at the time of writing through Article 19 of the ILC's Draft Articles, the author included this discussion (to analyze the legal implications of this evolving concept) while clarifying that even if a dual regime of criminal and non-criminal State responsibility were to be established, this should not be conflated with the distinct question of unity in (civil) responsibility for treaty and non-treaty breaches. The exclusion of criminal responsibility from the article's main discussion stemmed from the fact that in criminal responsibility, the emphasis is on the significance of rules rather than on the formal source of violated rules, which was the focus of the unity of (civil) responsibility debate.

A portion of the article was dedicated to the special status of obligations under the UN Charter as articulated in Article 103, clarifying that this provision was not intended to create a special regime of responsibility. Finally, the article examined the consequences of this unified system of international contractual and non-contractual responsibility. This included analyzing the relationship between grounds for treaty non-performance recognized in the law of treaties and circumstances precluding wrongfulness in State responsibility. One key consideration was that self-contained treaty regimes like the EU legal order constitute exceptions to the general applicability of international responsibility rules for treaty breaches. Notably, nearly 25 years after the article's publication, the Court of Justice of the European Union (CJEU), in its Achmea judgment following a referral from the German Federal Court, essentially adopted this perspective regarding the EU's autonomous legal order. The CJEU ruled that since investment arbitration tribunals are not part of the EU judicial system and lack access to the CJEU for preliminary rulings, arbitration clauses in intra-EU investment treaties would be invalid.[1] This recent CJEU jurisprudence thus validates the article's earlier analysis regarding self-contained regimes and their implications for international responsibility.

Essay Six, titled "The Evolution of State Sovereignty in Light of the Principle of Self-Determination of Peoples," was first presented on 18 May 1994 at an international law seminar at Shahid Beheshti University before being published in Issue 15 of *Legal Research Journal*. The article focused particularly on the emergence of a new dimension of self-determination emphasizing its internal aspect in assessing governmental legitimacy, as illustrated by the early 1990s Haiti crisis. Following the UN Security Council's Chapter VII resolutions aimed at restoring Haiti's democratically elected President Jean-Bertrand Aristide to power after the 1991 military coup, the article sought to determine whether these actions represented a significant evolution in international law principles concerning the international assessment of governmental legitimacy and sovereign authority.

The author observed that while it was unsurprising that self-determination would develop a new dimension in the post-decolonization era, there were serious concerns that major powers might exploit the ostensibly noble goal of guaranteeing internal governmental legitimacy to violate fundamental principles of non-intervention and the prohibition of the use of force.

1 See *Achmea BV v Slovak Republic*, PCA Case No 2008-13 (Final Award, 7 December 2012); *Slovak Republic v Achmea BV* (Case C-284(16/2018]] EUECJ (6 March 2018).

While welcoming the Security Council's active role in addressing the Haitian coup, the article cautioned against expansive interpretations of self-determination by certain Western scholars (particularly certain American scholars such as Anthony D'Amato and Michael Reisman) who sought to justify unilateral interventions in Panama and Grenada under the guise of promoting democracy. The author warned that such interpretations, divorced from the binding nature of positive international law and blurring the line between *lex lata* and *lex ferenda*, created dangerous conceptual confusion that could lead to unrestrained interventionism in practice - a prescient observation given subsequent developments in international relations.

The position articulated in this article, while firmly grounded in the specific context of the Haiti case concerning the Security Council's response to the September 1991 military coup that overthrew the democratically elected president, represented a carefully calibrated stance. It embraced the Security Council's proactive engagement against coups while simultaneously articulating profound reservations about potential distortions of the internal dimension of self-determination and governmental legitimacy discourse by major powers. The article warned that such distortions could serve as pretexts for violating core principles of the UN Charter and customary international law, particularly the prohibitions on unilateral force and intervention, all under the rhetorical guise of democracy promotion.

This analytical caution stemmed from observing the doctrinal positions of certain American legal scholars, most prominently Professor Michael Reisman as the leading exponent of the New Haven School's radical approach to international law. These scholars essentially negated international law's normative constraints on State action, maintaining that unilateral interventions and the use of force in the absence of a prior authorization from the Security Council could be justified when framed as advancing democratic governance. Their reasoning extended even to defending the manifestly unlawful 1989 U.S. intervention in Panama, which constituted a flagrant violation of fundamental international legal prohibitions. The article therefore deemed it imperative to confront this dangerous jurisprudential trend directly, asserting that "such expansive reinterpretations of self-determination, notwithstanding their ostensibly progressive veneer, not only fail to substantively advance popular sovereignty but may ultimately subvert it through the normalization of unlawful intervention."

Essay Seven, "The Hemophiliac Case Judgment - Reconstructing Civil Liability of the Government in Iranian Jurisprudence," published in 2005 in the *Journal of Legal Research* originated from an unusual procedural context. Unlike standard academic works, it emerged from a public engagement initiated by Dr. Ali Saberi, lead counsel in the landmark HIV-contaminated blood transfusion litigation (commonly referenced as the Hemophiliac Case). A 22 October 2003 newspaper feature quoting Dr. Saberi had solicited expert commentary on the civil liability of the government, particularly regarding the restrictive clause in Article 11 of Iran's Civil Liability Act,[1] as this nationally significant case involving initially approximately 1,000 plaintiffs (later exceeding 2,000) approached judgment.

1 **Article 11 of the Iran's Civil Liability Act (1960)** provides: "Government employees, municipal officials, and personnel of affiliated institutions shall be personally liable for damages caused to individuals either intentionally or through negligence in the course of their duties. However, where such damages result not from their acts but from defective equipment or facilities of the relevant administration or institution, compensation shall be the responsibility of said administration or institution. Notwithstanding the foregoing, the Government shall incur no liability for damages arising from sovereign acts (*acta jure imperii*) performed pursuant to legal authority when such measures: (i) are

The article's substantive analysis engaged with both the trial court's innovative reasoning in Chamber 1060 of Tehran's General Court and its subsequent appellate affirmation. The judgment broke new ground by holding government entities liable for both material and moral damages to hemophiliac patients, notwithstanding the conventional interpretation of Article 11's limitation on liability for sovereign acts. The author's examination revealed how the court navigated the tension between domestic legal formalism and Iran's international human rights obligations under the ICCPR, which had been ratified in 1975 and theoretically incorporated through Article 9 of Iran's Civil Code.

While acknowledging the judiciary's understandable reluctance to base decisions directly on imperfectly integrated treaty norms (which under Iranian law merely "have the force of law"), the article highlighted how the judgment implicitly incorporated international standards through creative interpretation of domestic causes of action. The court's finding of liability based on "defective administration of public institutions" regarding blood product safety protocols, coupled with its subtle engagement with comparative jurisprudence and ICCPR principles (particularly Article 2(3) on remedies for moral harm), established an important precedent for progressive development of the civil liability of the government. The author positioned this as a watershed moment in the relevant case law - one that cautiously but significantly advanced the domestic reception of international human rights norms through pragmatic judicial innovation.

Essay Eight, "Iran's Buyback Contracts and the Permanent Sovereignty over Natural Resources," reproduces the author's address delivered at the First National Energy Law Conference, organized by the Faculty of Law and Political Science at the University of Tehran in May 2009. The conference proceedings, including this lecture, were subsequently published in 2011 in the book *Energy Law*. The author notes in the introduction to Volume II that since the original published version of the speech omitted footnotes, this republication provided a valuable opportunity to incorporate them, thereby enriching the analytical depth of the discussion.

The lecture first emphasized that the adoption of buyback contracts for exploration and production agreements was fundamentally linked to the *nationalization* of Iran's oil industry. Even prior to the Islamic Revolution, Article 19 of the 1974 Petroleum Act explicitly affirmed State ownership, stipulating:

"Petroleum extracted from Iranian oil resources shall be the property of the National Iranian Oil Company (NIOC). The Company may not transfer any portion of petroleum prior to its extraction."

Following the 1979 Revolution, additional constitutional restrictions solidified the buyback model as the only permissible contractual framework for oil and gas exploration and production in Iran, to the extent that international scholars commonly refer to these agreements as "Iranian buyback contracts."

However, as elaborated in the article, over time this model faced mounting criticism from foreign oil companies and legal experts. A central concern was the inherent risk allocation structure: under buyback agreements, the investor (foreign oil company) assumes full exploration risk, with no cost recovery if no commercially viable hydrocarbon reserves

necessitated by public interest considerations; and (ii) are conducted in accordance with statutory provisions."

are discovered. Moreover, even successful exploration did not guarantee the same contractor would be awarded the subsequent field development contract—NIOC retained discretion to negotiate with alternative parties if initial talks failed.

In the *first-generation buyback contracts*, where offered fields often had prior exploration data, risk exposure for foreign firms remained limited. However, as Iran introduced new exploratory blocks, the uncertainty and financial risk intensified, diminishing the model's appeal to international investors. The article systematically examines these criticisms, analyzing how shifting risk dynamics and contractual inflexibility gradually affected the buyback framework's appeal in competitive global energy markets.

Conclusion

The twenty articles in these volumes comprehensively reflect both the scholarly and professional dimensions of the author's work in *public international law* and *international arbitration* over the past three decades. Notably, the passage of time has not diminished the relevance of the earlier works; in some cases, their significance has grown in light of subsequent developments.

Particularly prescient was the author's warning in the 1990s article *The Evolution of State Sovereignty in Light of the Principle of Self-Determination of Peoples* about potential abuses of the internal dimension of self-determination and debates over governmental legitimacy. The article cautioned that major powers might exploit these concepts to justify violations of fundamental UN Charter principles and customary international law—particularly the *prohibition on the use of force* and *non-intervention*—through unilateral actions framed as promoting democracy.

These concerns have been validated by the subsequent trajectory of scholars like *Professor Michael Reisman* of the *New Haven School*, who in recent works has not only explicitly endorsed foreign military intervention to instigate regime change but has theorized five justificatory factors for such actions, including *i)* the feasibility of regime change; *ii)* the ability to complete the process within a relatively short timeframe; and *iii)* the intervening State's lack of intent to permanently expand its influence in the target country.[1]

Several articles also revisit their subjects through the lens of contemporary developments. The two articles on the *legal regime of the Caspian Sea*, for instance, gain new relevance following the 2018 Aktau Convention. The first article critiques the maximalist position prevalent among Iranian jurists in the 1990s—that the 1940 Iran-USSR Treaty's reference to the *Iranian and Soviet Sea* entitled Iran to claim 50% of the Caspian Sea. The author demonstrates how this view misapplied S*tate succession* principles by ignoring the foundational doctrine that *"the land dominates the sea"*—where coastal geography determines maritime rights.

The author explains that given the *USSR's extensive Caspian coastline*, State succession necessarily transferred equivalent maritime rights to its successor States. The 1921 and 1940 treaties contained minimal territorial provisions, and even the 1940 Treaty's 10-mile fishing zones—allocated according to coastal length—reflected this geographical determinism rather than mathematical equality.

1 Reisman WM, *The Quest for World Order and Human Dignity in the Twenty-First Century: Constitutive Process and Individual Commitment* (2nd edn, Brill Nijhoff 2022) 292.

Together with the author's seminal treatises "The Law of International Responsibility"[1] and "The Law of State Succession"[2]—products of thirty years of teaching and research—these collected articles (composed during the same period) offer invaluable insights for members of the legal community in Iran. Their enduring relevance lies in *i)* historical contextualization of evolving legal debates; *ii)* methodological rigor in applying international law principles; and *iii)* prescient analysis of such issues as State sovereignty, investment arbitration, commercial arbitration, and the function of the International Court of Justice in protecting the rule of law in international affairs. This body of work remains essential reading for understanding both the theoretical foundations and practical challenges of contemporary international law.

1 Seifi SJ, *International Responsibility Law: Issues on State Responsibility* (3rd edn, Shahr-e Danesh Publication 2023).

2 Seifi SJ, *State Succession Law: Issues on the Establishment and Succession of States in International Law* (2nd edn, Shahr-e Danesh Publication 2022).

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