Chapter Eighteen

Iran-United States Claims Tribunal

*Jeremy K. Sharpe**

A. *Introduction*

The Iran-United States Claims Tribunal, established in 1981, has been called "the most significant arbitral body in history,"[1] representing "one of the most ambitious and complex international claims adjudication programs ever undertaken."[2] In its origin, operation, and accomplishments, the Tribunal is unique. Prior to the Tribunal's establishment, states periodically created, through bilateral negotiations, mixed claims commissions to settle by lump-sum payments claims of one state's nationals against another state, often calling upon neutral umpires to resolve disputes when party-appointed commissioners could not reach agreement.[3] The Tribunal, by contrast, was created through indirect negotiations to individually adjudicate what turned out to be thousands of often complex commercial and international law claims, totaling tens of billions of dollars, amidst ongoing political tensions between two states parties acting as both Claimant and Respondent.[4] Despite a challenging mandate and difficult operating environment, the Tribunal has successfully, and for the most part fairly, disposed of the vast

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* Views expressed in this chapter are personal and may not reflect those of the U.S. government or the U.S. State Department.

[1] Richard Lillich, "Preface," in Richard B. Lillich ed., *Iran-United States Claims Tribunal 1981–1983* (Charlottesville: University Press of Virginia, 1984), pp. i, vii.

[2] David P. Stewart & Laura B. Sherman, "Developments at the Iran-United States Claims Tribunal: 1981–1983," in Lillich, *Iran-United States Claims Tribunal 1981–1983*, *op. cit.*, pp. 1, 6.

[3] *See id.*; Richard B. Lillich & Burns H. Weston eds., *International Claims: Their Settlement by Lump Sum Agreements*, Vols. I & II (Charlottesville: University Press of Virginia, 1975).

[4] *See* Stewart & Sherman, "Developments at the Iran-United States Claims Tribunal: 1981–1983," in Lillich, *Iran-United States Claims Tribunal 1981–1983*, *op. cit.*, pp. 6–7.

majority of the cases brought before it, and in so doing has made significant and lasting contributions to international law and arbitration.

The Tribunal is a product of the hostage crisis that followed the Islamic Revolution in Iran, which culminated in early 1979 with the ouster of the Shah and the establishment of an Islamic republic.[5] Over the preceding quarter-century, the Shah had tapped the country's rapidly growing oil wealth to bring wide-ranging social, economic, and military changes to Iran. The United States had provided critical support, through trade, investment, equipment, and training. The decline in the Shah's legitimacy saw a rise in anti-Americanism, which itself became a driving force of the Revolution.

In the summer of 1978, antigovernment riots, strikes, and other civil unrest began sweeping the country. By early 1979, the Shah had left the country, Ayatollah Ruhollah Khomeini had returned from exile, and the Islamic Republic of Iran had been established. Beginning in the spring of 1979, the government nationalized the banking,[6] insurance,[7] oil,[8] and heavy

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[5] Information on the Tribunal's background and composition, as well as its constitutive documents, rules of procedure, and a list of the Tribunal's awards and decisions, can be found at the Tribunal's website, www.iusct.org. For historical information concerning the Tribunal's establishment, *see The Iran Agreements: Hearings Before the Senate Foreign Relations Committee*, 97th Cong, 1st Sess. (Washington, D.C.: U.S. Government Printing Office, 1981); Daniel Barstow Magraw, "The Tribunal in Jurisprudential Perspective," in Richard B. Lillich & Daniel Barstow Magraw eds., *The Iran-United States Claims Tribunal: Its Contributions to the Law of State Responsibility* (New York: Transnational, 1998), pp. 38–46; Andreas F. Lowenfeld *et al.* eds., *Revolutionary Days: The American Hostages and the Iranian Revolution* (United States: Juris, 1998), pp. 1–9; Charles N. Brower & Jason D. Brueschke, *The Iran-United States Claims Tribunal* (The Hague: Kluwer, 1998), pp. 3–10; and Mohsen Mohebi, *The International Law Character of the Iran-United States Claims Tribunal* (The Hague: Kluwer, 1999), pp. 57–90.

[6] *See, e.g., Reza Said Malek v. Government of the Islamic Republic of Iran*, Award No. 534-193-3 (Aug. 11, 1992), 28 *Iran-U.S. Cl. Trib. Rep.*, pp. 246, 255 (discussing enactment of Law of Nationalization of Private Banks in Iran of July 8, 1979).

[7] *See, e.g., American International Group, Inc. v. Islamic Republic of Iran*, Award No. 93-2-3 (Dec. 19, 1983), 4 *Iran-U.S. Cl. Trib. Rep.*, pp. 96, 98 ("On 25 June 1979, all insurance companies operating in Iran…were proclaimed nationalized by the Law of Nationalization of Insurance Corporations.").

[8] *See, e.g., Amoco International Finance Corp. v. Government of the Islamic Republic of Iran*, Partial Award No. 310-56-3 (July 14, 1987), 15 *Iran-U.S. Cl. Trib. Rep.*, pp. 189, 209 ("(O)n 8 Jan. 1980, the Revolutionary Council of the Islamic Republic of Iran promulgated the Single Article Act Concerning the Nationalization of the Oil Industry in Iran," stating that "(a)ll oil agreements considered by a special commission appointed by the Minister of Oil to be contrary to the…Act shall be annulled and claims arising from the conclusion and execution of such agreements shall be settled by the decision of said commission."); *Mobil Oil Iran Inc. v. Government of the Islamic Republic of Iran*, Award No. 311-74/76/81/150-3 (July 14, 1987), 16 *Iran-U.S. Cl. Trib. Rep.*, pp. 3, 10; *Phillips Petroleum Co., Iran v. Islamic*

industries.[9] As the Revolution unfolded, Americans in Iran faced increasing difficulties, including threats, expulsions, contract cancelations, expropriations of their property, and interference in the management of their business interests. By the summer of 1979, some 45,000 Americans living and working in Iran had fled the country. The Revolution crippled economic and military relations between the United States and Iran, although diplomatic relations continued for a time, as a skeleton crew of U.S. diplomats in Tehran grappled with the political, economic, and strategic implications of the Revolution.

On November 4, 1979, a group of Iranian militants seized the U.S. embassy compound in Tehran, detained U.S. diplomatic and consular personnel, and demanded the return of the former Shah and his assets from the United States. The U.S. government, in turn, called upon the Iranian government to secure the safe and immediate release of the American hostages. Once it became clear that the regime in Tehran supported the hostage-takers, the United States took a series of steps at home and abroad to secure the hostages' safe release, while seeking to avoid paying – or being seen to pay – political or financial ransom. The United States, among other actions, severed diplomatic relations with Iran, stopped delivering military parts, froze Iranian assets subject to U.S. jurisdiction, imposed economic sanctions on Iran, lodged a complaint with the International Court of Justice,[10] and attempted a rescue operation. United States nationals and companies, moreover, filed hundreds of cases in U.S. courts against Iran or its state-owned or state-controlled instrumentalities.

Over the ensuing months, amidst ongoing revolutionary tumult, a factious Iranian government declined to engage in substantive discussions to resolve the hostage crisis. By September 1980, however, the regime had largely consolidated its power and, following a surprise invasion by Iraq, found itself needing to improve its international standing and to access some U.S. $12 billion in blocked assets.

Iran nonetheless remained unwilling to negotiate directly with the United States. It thus appointed the Algerian government as its representative in negotiations. Algeria's foreign minister, however, opted to serve not as Iran's

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Republic of Iran, Interlocutory Award No. ITL 11-39-2 (Dec. 30, 1982) 1 *Iran-U.S. Cl. Trib. Rep.*, pp. 487, 488.

[9] *See, e.g., INA Corp. v. Government of the Islamic Republic of Iran*, Award No. 184-161-1 (Aug. 12, 1985), 8 *Iran-U.S. Cl. Trib. Rep.*, pp. 373, 378 ("(O)n 5 July 1979 there followed the nationalisation of heavy industries.").

[10] *Case Concerning United States Diplomatic and Consular Staff in Tehran* (U.S. v. Iran), Order on Request for the Indication of Provisional Measures, 1979 I.C.J., p. 3 (Dec. 15); Judgment, 1980 I.C.J., p. 3 (May 24).

proxy but as a mediator and honest broker. Following intense, indirect negotiations, the parties reached agreement on January 19, 1981, in the waning hours of President Jimmy Carter's administration. Because the Iranian regime would not sign an agreement with the United States, the Algerian government issued two declarations containing legally binding commitments, to which Iran and the United States adhered. Those declarations, together with various technical agreements, became known as the Algiers Accords.

The "General Declaration" contains the parties' key commitments.[11] The United States principally agreed to restore, as far as possible, the financial position of Iran to that which existed prior to the date of the U.S. government's freeze order (including by transferring almost U.S. $10 billion in blocked Iranian financial assets, and by arranging the transfer of certain other assets); to help Iran take certain steps in U.S. courts to recover assets in the United States of the former Shah and his close relatives;[12] and to terminate and preclude litigation in U.S. courts involving claims of U.S. nationals against Iran, in favor of arbitration.[13] The United States also undertook to refrain from interfering in Iran's internal affairs. Iran principally agreed to secure the release of the remaining fifty-two American hostages and to establish a Security Account to satisfy arbitration awards rendered against Iran.

The "Claims Settlement Declaration"[14] established the Iran-United States Claims Tribunal as the mechanism for resolving, through binding arbitration, covered claims that had not already been settled when the Tribunal began its work.[15]

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[11] Declaration of the Government of the Democratic and Popular Republic of Algeria (Jan. 19, 1981), 1 *Iran-U.S. Cl. Trib. Rep.*, p. 4, *available at* www.iusct.org.

[12] U.S. regulations then in effect had allowed these cases to proceed in U.S. courts, but had prevented the issuance of final judgments. 31 C.F.R. secs. 535.203(e) and 534(a–b).

[13] The U.S. Supreme Court upheld the President's authority in this regard in *Dames & Moore v. Regan*, 453 U.S. 654 (1981).

[14] 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 (Jan. 19, 1981), 1 *Iran-U.S. Cl. Trib. Rep.*, p. 9, *available at* www.iusct.org.

[15] Notably, Article I states in part, "Iran and the United States will promote the settlement of the claims described in Article II by the parties directly concerned."

B. *Overview of the Tribunal*

1. *Seat*

The parties established The Hague as the Tribunal's seat.[16] Through an exchange of letters with the Dutch government, the Tribunal obtained privileges and immunities for its members and staff. In April 1982, the Tribunal moved from the Peace Palace, where it had shared facilities with the Permanent Court of Arbitration, to its permanent location in The Hague.

2. *Composition*

The Tribunal is composed of nine members, three appointed by each government and three (including a President) appointed by the party-appointed members or, failing agreement, by the Tribunal's appointing authority.[17] All members, including party-appointed members, are required to be impartial and independent.[18] Members are aided by legal assistants.

3. *Operation*

The Tribunal decides cases by a majority vote of the Full Tribunal or of one of the Tribunal's three Chambers, each of which comprises three members, including a Chairman. A Chairman cannot decide cases alone,[19] but must form a majority with at least one other member of that Chamber.[20] Members may record dissenting votes and issue dissenting opinions.[21]

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[16] Claims Settlement Declaration, *op. cit.*, art. VI(1) ("The seat of the Tribunal shall be The Hague, The Netherlands, or any other place agreed by Iran and the United States.").

[17] *Id.* art. III(1). The parties may agree to increase the size of the Tribunal by multiples of three, but never agreed to do so. *Id.*

[18] Tribunal Rules of Procedure, art. 10(1), *available at* www.iusct.org.

[19] By contrast, *see* the Rules of Arbitration of the International Chamber of Commerce, art. 25(1), *available at* www.iccwbo.org ("When the Arbitral Tribunal is composed of more than one arbitrator, an Award is given by a majority decision. If there be no majority, the Award shall be made by the chairman of the Arbitral Tribunal alone.")

[20] This often leads to situations in which one member joins with the Chairman only for purposes of forming a majority decision, but then criticizing the Tribunal for misinterpreting the evidence or misapplying the law or the burden or standard of proof. *See* Gunnar Lagergren, *Five Important Cases on Nationalisation of Foreign Property Decided by the Iran-United States Claims Tribunal* (Sweden: Raoul Wallenberg Institute, 1988), p. 7.

[21] Tribunal Rules, *op. cit.*, note to Art. 32.

The Tribunal – or the President alone, when authorized – issues internal guidelines and orders governing procedural matters.[22] The President also issues presidential directives to facilitate and expedite the Tribunal's work.[23]

A Tribunal-appointed Secretary-General supervises the Tribunal's administration and assists the President with matters that are not directly connected with deciding cases. As such, the Secretary-General maintains the Tribunal's institutional records, advises the President on constitutional and administrative aspects of the Tribunal's work, and maintains the Tribunal's routine external communications.[24]

The Tribunal is further assisted by a Registrar, who performs filing, service, and custodial functions.[25] The Registrar screens documents and, subject to the Tribunal's review and ratification, may refuse to accept untimely filed or other improper documents, such as claims manifestly outside of the Tribunal's jurisdiction.[26]

Agents for Iran and the United States represent their respective governments at the Tribunal and, according to the Claims Settlement Declaration, "receive notices or other communications directed to [each government] or to its nationals, agencies, instrumentalities, or entities in connection with proceedings before the Tribunal."[27] In practice, the Agents have played a much broader role, including presenting their governments' positions to the Tribunal, conducting informal negotiations on procedural and administra-

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[22] *See* Internal Guidelines of the Tribunal, 1 *Iran-U.S. Cl. Trib. Rep.*, p. 98; Tribunal Rules, *op. cit.*, art. 31(2) ("In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide on his own, subject to revision, if any, by the arbitral tribunal.").

[23] *See* Christopher Pinto, "Institutional Aspects of the Tribunal," in David D. Caron & John R. Crook eds., *The Iran-United States Claims Tribunal and the Process of International Claims Resolution* (New York: Transnational, 2000), pp. 95, 101–102 (noting that directives have addressed such matters as reallocating the work among Chambers, or between a Chamber and the Full Tribunal; designating a Chamber that is not in recess to address requests for interim measures or other urgent matters; substituting a member for another member who is temporarily absent or indisposed; and, extraordinarily, suspending proceedings for the constitution of a special Chamber to address certain issues).

[24] *Id.* at pp. 115–16.

[25] Since Aug. 1983, two persons of equal rank, an Iranian and a U.S. national, have served as Co-Registrars. *Id.* at p. 104.

[26] Tribunal Rules, *op. cit.*, Art. 2(5). *See also In re Refusal to Accept the Claim of Cascade Overview Development Enterprises, Inc.* (Refusal Case No. 1), 1 *Iran-U.S. Cl. Trib. Rep.*, p. 127 (upholding Registrar's refusal to file the claim received by mail one day after the Tribunal's jurisdictional cut-off date). The Registrar also declined to file, on jurisdictional grounds, some 1,330 claims submitted by Iran apparently against U.S. nationals. *See* Brower & Brueschke, *The Iran-United States Claims Tribunal*, *op. cit.*, p. 26 n. 105.

[27] Claims Settlement Declaration, *op. cit.*, Art. VI(2).

tive matters, consulting with Claimants, conducting negotiations with the host government, discussing matters with the appointment authority, and conducting settlement negotiations.[28]

4. *Costs*

The Tribunal's expenses are borne equally by the United States and Iran.[29] The "costs of arbitration," by contrast, in principle are borne by the unsuccessful party in a given case, although the Tribunal may apportion those costs if it deems it reasonable to do so under the circumstances.[30] The Tribunal also decides who bears the costs of the parties' legal representation, although, again, the Tribunal may apportion those costs as it deems reasonable.[31] In practice, the Tribunal has consistently required the governments to bear their own costs of arbitration and legal representation in intergovernmental disputes.[32] The Tribunal, however, established no such consistent practice in cases involving private parties.[33]

5. *Applicable Law*

The Tribunal is required to "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."[34] As such, the Tribunal has significant freedom to apply any law it deems relevant, although it cannot decide cases on equitable grounds without the arbitrating parties' express consent.[35] As the Tribunal has noted, "It is difficult to conceive of a choice of law provision that would give the Tribunal greater

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[28] Arthur W. Rovine, "The Role of the Agent," in Caron & Crook eds., *The Iran-United States Claims Tribunal and the Process of International Claims Resolution*, *op. cit.*, p. 19.

[29] Claims Settlement Declaration, *op. cit.*, Art. VI(3).

[30] Tribunal Rules, *op. cit.*, Art. 40(1).

[31] *Id.*, Art. 40(2).

[32] *See, e.g.*, *United States of America v. Iran*, Decision No. DEC 132-A33-FT (Sep. 9, 2004), 38 *Iran-U.S. Cl. Trib. Rep.*, pp. 5, 18 ("It is the Tribunal's longstanding practice not to award arbitration costs in disputes between the Parties concerning the interpretation or performance of the Algiers Declarations.").

[33] George A. Aldrich, *The Jurisprudence of the Iran-United States Claims Tribunal* (New York: Oxford University Press, 1996), p. 480 (noting that Chamber Two generally declined to award any costs of arbitration and legal representation, while Chambers One and Three tended to award costs of arbitration – albeit token amounts – to the prevailing party).

[34] Claims Settlement Declaration, *op. cit.*, Art. V.

[35] Tribunal Rules, *op. cit.*, Art. 33(2).

freedom in determining case by case the law relevant to the issues before it."[36] The Tribunal, in fact, generally has not explicitly applied choice-of-law principles to determine the applicable rules of decision; rather, it has directly applied international law and transnational commercial law, as well as any applicable contracts between the disputing parties.[37]

6. *Jurisdiction*

Reflecting its mixed public and private law character, the Tribunal has jurisdiction to resolve three types of cases: private claims, official claims, and interpretive disputes.

a. *Private Claims*

The Tribunal may hear claims (and related counterclaims)[38] of U.S. nationals against Iran[39] and of Iranian nationals against the United States[40] that arise

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[36] *CMI International Inc. v. Ministry of Roads and Transportation*, Award No. 99-245-2 (Dec. 27, 1983), 4 *Iran-U.S. Cl. Trib. Rep.*, pp. 263, 267–68.

[37] *See* "The Long-Term Contribution of the Tribunal to International Law," remarks of Charles N. Brower, in Lowenfeld *et al.* eds., *Revolutionary Days*, *op. cit.*, pp. 173, 178 ("I find it impossible to recall a tribunal case which considered entering into a conflict of laws analysis.").

[38] Under the Claims Settlement Declaration, the Tribunal has jurisdiction over any counterclaim that "arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim…." Claims Settlement Declaration, *op. cit.*, Art. II(1).

[39] The Claims Settlement Declaration defines "Iran" as "the Government of Iran, any political subdivision of Iran, and any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof." It defines the "United States" as "the Government of the United States, any political subdivision of the United States, and any agency, instrumentality or entity controlled by the Government of the United States or any political subdivision thereof." *Id.*, Arts. VII(3)–(4).

[40] *Id.*, Art. II(1). A "national" of Iran or of the United States is defined as "(a) a natural person who is a citizen of Iran or the United States; and (b) a corporation or other legal entity which is organized under the laws of Iran or the United States or any of its states or territories, the District of Columbia or the Commonwealth of Puerto Rico, if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock." *Id.* art. VII(1). For jurisdictional purposes, a dual U.S.-Iranian national has the nationality of his or her "dominant and effective nationality" during the period from when the claim arose until the date of the Tribunal's establishment. *Iran v. United States of America*, Decision No. DEC 32-A18-FT (Apr. 6, 1984), 5 *Iran-U.S. Cl. Trib. Rep.*, pp. 251, 265 (quoting *Nottebohm Case* (Liechtenstein v. Guatemala), 1955 I.C.J. 4, 22 (Judgment of Apr. 6)). A Claimant's dominant and effective nationality is based on "all relevant factors, including habitual residence, center of interests, family ties, participation in public life and other evidence of attachment." *Id.* at p. 265. The Tribunal established "an important caveat" in Case

out of debts, contracts, expropriations, or "other measures affecting property rights."[41] Claimants are not required to exhaust local remedies before bringing their claims to the Tribunal, contrary to the customary practice in international law.[42] Once Claimants file their claims with the Tribunal, moreover, the claims are deemed excluded from the jurisdiction of Iranian, U.S., or any other courts.[43]

Individual claims of U.S. $250,000 or more are designated "large claims," while those of less than U.S. $250,000 are designated "small claims." Claimants are responsible for prosecuting large claims, while Iran and the United States present small claims on behalf of their respective nationals.[44] In contrast to the traditional espousal practice of states, all private claims, large and small, are claims of individual Claimants, and not of the states parties.[45]

Nearly 1,000 large claims and 3,000 small claims were filed with the Tribunal. The vast majority of private claims were brought by U.S. parties against Iran. The last private claim was decided in 2003.

Approximately 2,500 small claims (2,400 American and 100 Iranian), including some claims outside of the Tribunal's jurisdiction, were settled by a U.S. $105 million lump-sum payment by Iran, in an agreement between Iran and the United States.[46]

b. *Official Claims*

The Tribunal may hear certain official claims between Iran and the United States based on contractual arrangements for the purchase and sale of goods and services. These claims (designated "B" claims) generally are heard by

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No. A/18, which it applied in subsequent cases: "In cases where the Tribunal finds jurisdiction based upon a dominant and effective nationality of the Claimant, the other nationality may remain relevant to the merits of the claim." *Id.* at pp. 255–56.

[41] Claims Settlement Declaration, *op. cit.*, Art. II(1).

[42] C.F. Amerasinghe, *Local Remedies in International Law* (Cambridge: Grotius, 1990), p. 1.

[43] Claims Settlement Declaration, *op. cit.*, Art. VII(2).

[44] *Id.*, Art. III(3).

[45] *See Islamic Republic of Iran v. United States of America*, Decision No. DEC 62-A21-FT (May 4, 1987), 14 *Iran-U.S. Cl. Trib. Rep.*, pp. 324, 330.

[46] *United States of America, on Behalf of U.S. Nationals v. Islamic Republic of Iran*, Award on Agreed Terms No. 483-Claims of Less Than U.S. $250,000/86/B38/B76/B77-FT (June 22, 1990), 25 *Iran-U.S. Cl. Trib. Rep.*, p. 327. The parties' claims were then adjudicated in the Foreign Claims Settlement Commission, which was required to "apply Tribunal precedent concerning both jurisdiction and the merits," as well as "take into account all issues including counterclaims and liens." *Id.* at 334. Based on the experience of the Tribunal, the United Nations Compensation Commission established a claims process in which the smallest claims (individuals with claims less than U.S. $2,500 were paid first on the basis of standardized evidence). *See* Chapter XVII, The United Nations Compensation Commission, by Feighery in this book.

individual Chambers.[47] Seventy-seven B claims were filed with the Tribunal: fifty-three by Iran and twenty-four by the United States.[48] To date, seventy-two of those claims have resulted in an award or decision.[49] All remaining B claims are by Iran against the United States.

c. *Interpretive Disputes*

The Tribunal also may hear disputes over the interpretation or performance of the General Declaration and the Claims Settlement Declaration.[50] These interpretive disputes (designated "A" claims) are heard by the Full Tribunal.[51] To date, thirty-seven A claims have been brought, twenty of which have resulted in an award or decision.[52]

Although the Tribunal's jurisdictional mandate is broad, it is not unlimited. The Tribunal, for instance, lacks jurisdiction to hear claims of the United States or Iran against nationals of the other state, except as counterclaims in cases properly within the Tribunal's jurisdiction.[53]

Aside from interpretive disputes, for jurisdictional purposes, all claims and counterclaims must have been outstanding on the date of the Algiers Declarations (January 19, 1981)[54] and were required to have been filed with

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[47] B claims originally were assigned to the Full Tribunal, but then were assigned to individual Chambers. Presidential Order No. 1 (Oct. 19, 1981), 1 *Iran-U.S. Cl. Trib. Rep.*, p. 95 (assigning to Full Tribunal); Presidential Order No. 8 (Mar. 24, 1982), 1 *Iran-U.S. Cl. Trib. Rep.*, p. 97 (assigning to Chambers). Case No. B1, a large, complex, multibillion-dollar case brought by Iran concerning Iran's purchase of U.S. military equipment and services, remains with the Full Tribunal, as does Case No. B61, another military-related official claim.

[48] *Iran-United States Claims Tribunal Annual Report* (1994), pp. 15–16.

[49] Iran-United States Claims Tribunal Communiqué (Jan. 19, 2011), p. 2, *available at* http://www.iusct.org/english/page5/files/communique-english.pdf.

[50] Claims Settlement Declaration, *op. cit.*, art. II(3) & art. VI(4); *see also Iran v. United States*, Decision No. DEC 1–A2–FT (Jan. 13, 1982), 1 *Iran-U.S. Cl. Trib. Rep.*, pp. 101, 102 (noting that the Tribunal "has not only the power but the duty to give an interpretation" on points raised by Iran or the United States under the General or Claims Settlement Declarations). The Tribunal also may hear certain claims between United States and Iranian banking institutions. Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with Respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, ¶ 2(B) (Jan. 19, 1981), 1 *Iran-U.S. Cl. Trib. Rep.*, pp. 13–14.

[51] Presidential Order No. 1, *op. cit.*, p. 95.

[52] Iran-United States Claims Tribunal Communiqué, *op. cit.*, p. 2.

[53] *Iran v. United States*, Decision No. DEC 1-A2-FT (Jan. 13, 1982), 1 *Iran-U.S. Cl. Trib. Rep.*, pp. 101, 103 ("Such a right of counter claim is normal for a respondent, but it is admitted only in response to a claim and it does not mean, by analogy, that each State is allowed to submit claims against nationals of the other State. It means, *a contrario*, just the opposite.").

[54] In that sense, the Claims Settlement Declaration has been cited as a kind of "retrospective BIT." It establishes substantive obligations and a claim structure that are similar to those

the Tribunal within a year of that date.[55] No deadlines were imposed on the Tribunal for resolving claims or for issuing awards after an oral hearing. In addition, no sunset provision was made for winding up the Tribunal's activities.

Early awards suggested that the Tribunal would interpret its jurisdiction restrictively.[56] The Tribunal subsequently acknowledged its obligation to interpret the Claims Settlement Declaration's jurisdictional provisions in conformity with the Vienna Convention on the Law of Treaties – *i.e.*, in good faith and in accordance with the ordinary meaning given to the terms of the treaty in their context and in light of the treaty's object and purpose.

7. *Enforcement*

The Tribunal's decisions and awards are final and binding and are not subject to appeal, review, or revision, except for technical or other such corrections.[57] Under the General Declaration, Iran was required to place U.S. $1 billion into an account for securing payment of awards rendered by the Tribunal against Iran, and to keep that account topped off at U.S. $500 million until all awards against Iran have been satisfied.[58] This interest-bearing

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contained in bilateral investment treaties, but, unlike forward-looking BITs, which often require that claims arise after the entry into force of the BIT, the Tribunal's jurisdiction looks backward from the date of the establishment of the Algiers Declarations. *See* David D. Caron, "The Iran-U.S. Claims Tribunal and Investment Arbitration: Understanding the Claims Settlement Declaration as a Retrospective BIT," in Christopher R. Drahozal & Christopher S. Gibson, eds., *The Iran-U.S. Claims Tribunal at 25: The Cases Everyone Needs to Know for Investor-State & International Arbitration* (Oxford: Oxford University Press, 2007), pp. 375, 376.

[55] Claims Settlement Declaration, *op. cit.*, art. III(4) (noting that claims had to be filed by one year after entry into force of the Claims Settlement Declaration or six months after the appointment of the President, whichever was later.)

[56] *See, e.g., Lillian Byrdine Grimm v. Government of the Islamic Republic of Iran*, Award No. 25-71-1 (Feb. 22, 1983), 2 *Iran-U.S. Cl. Trib. Rep.*, pp. 78, 80 ("(I)t is generally recognized that a provision which establishes the scope of the jurisdiction of an arbitral tribunal should be given a restrictive interpretation").

[57] Claims Settlement Declaration, *op. cit.*, art. IV(I); Tribunal Rules, *op. cit.*, arts. 32(2), 36–37; *see also Frederica Lincoln Riahi and Government of the Islamic Republic of Iran*, Decision No. DEC 133-485-1 (Nov. 17, 2004), 38 *Iran-U.S. Cl. Trib. Rep.*, pp. 19, 20 (quoting June 6, 2003 letter from the President to the Claimant, stating: "Neither the Claims Settlement Declaration nor the Tribunal Rules provide for a procedure for challenging before the Full Tribunal a final and binding award by a Chamber.").

[58] General Declaration, *op. cit.*, ¶ 7. The Tribunal has twice reaffirmed Iran's obligation to keep the Security Account replenished, which in recent years has fallen below U.S. $500 million. *United States of America, et al. v. Islamic Republic of Iran, et al.*, Decision No. DEC 130-A28-FT (Dec. 19, 2000), 36 *Iran-U.S. Cl. Trib. Rep.*, pp. 5, 32; *United States of America* and *Islamic Republic of Iran*, Decision No. Dec 132-A33-FT, ¶ 45 (Sep. 9, 2004),

"Security Account," which was established by Iran at the Settlement Bank of the Netherlands in the name of the Central Bank of Algeria, has been used to pay all awards rendered against Iran. The U.S. government, by contrast, was not required to establish an account for securing payment of awards, but nonetheless has paid all awards rendered against it. Claims may be enforced in the courts of any state, in accordance with that state's laws.[59] The Tribunal has held the United States responsible for the failure of U.S. courts to enforce a Tribunal award issued in favor of Iran against a U.S. company.[60]

8. *Interest*

Neither the Claims Settlement Declaration nor the Tribunal Rules provide for awards of interest. The Tribunal nonetheless recognized that interest is an integral element of a damages award and thus typically is awarded even when not addressed expressly in the *compromis*.[61] The Tribunal, however, never forged a consensus on whether to award interest or, when awarded, on the appropriate interest rate. The Tribunal also declined to award compound interest, a practice that is consistent with the traditional international law rule but contrary to emerging trends in international arbitration.[62]

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38 *Iran-U.S. Cl. Trib. Rep.* The Tribunal, however, denied a request by the United States to suspend proceedings in Iran's remaining claims pending compliance with its replenishment obligation. *Id.*

[59] General Declaration, *op. cit.*, ¶ 17; Claims Settlement Declaration, *op. cit.*, Art. IV(3).

[60] *Islamic Republic of Iran v. United States of America*, Award No. 586-A27-FT (June 5, 1998), 34 *Iran-U.S. Cl. Trib. Rep.*, pp. 39, 59 ("(T)he Tribunal holds that, through the refusal by the United States Court of Appeals for the Second Circuit to enforce the *Avco* award, the United States has violated its obligation under the Algiers Declarations to ensure that a valid award of the Tribunal be treated as final and binding, valid, and enforceable in the jurisdiction of the United States.").

[61] *Islamic Republic of Iran v. United States of America*, Decision No. DEC 65-A19-FT (Sep. 30, 1987), 16 *Iran-U.S. Cl. Trib. Rep.*, pp. 285, 289–90; *see also* Concurring and Dissenting Opinion of Judge Brower in *McCollough & Co., Inc. v. Ministry of Post, Telegraph & Telephone*, Award No. 225-89-3 (Apr. 22, 1986), 11 *Iran-U.S. Cl. Trib. Rep.*, pp. 35, 42 ("Conceptually, interest is an item of damage. Its award is intended as compensation for the temporary withholding of money, and its measure is the cost of such deprivation.").

[62] *See* Marjorie M. Whiteman, *Damages in International Law*, Vol. 3 (Washington, D.C.: U.S. Government Printing Office, 1943), p. 1997 ("There are few rules within the scope of the subject of damages in international law that are better settled than the one that compound interest is not allowable.") (citations omitted). *But see* Charles N. Brower & Jeremy K. Sharpe, "Awards of Compound Interest in International Arbitration: The *Aminoil* Non-Precedent," in Gerald Aksen *et al.* eds., *Global Reflections on International Law, Commerce and Dispute Resolution* (Paris: International Chamber of Commerce, 2005), pp. 155, 176–78 (discussing trend away from traditional rule).

C. *Procedural Overview*

1. *Rules of Procedure*

The Claims Settlement Declaration provides that "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 the Tribunal to ensure that this Agreement can be carried out."[63] When the Tribunal was established, the 1976 UNCITRAL Rules were relatively new and untested. The United States nonetheless proposed their use in part because the UNCITRAL Rules had been drafted by a UN commission of experts and had been adopted by the UN General Assembly, thus reflecting acceptance among numerous states with varying economic systems.[64] The UNCITRAL Rules were conceived, however, to establish procedures for a one-off tribunal (comprising one or three arbitrators) to hear a single commercial dispute, issue a confidential award, and then go out of business.[65] It was recognized, therefore, that the two governments and the Tribunal would need to amend the Rules to govern a standing nine-member tribunal that, sitting in plenary or in three-member chambers, would adjudicate thousands of commercial and public international law cases involving private and public parties.[66]

The Tribunal presented the amended rules in a novel format. The Tribunal first set out the text of each UNCITRAL Rule, then set out the text of any modifications to the Rule, and then added "notes" to illustrate how the Tribunal would "implement or interpret the UNCITRAL Arbitration Rules, as modified."[67] This approach made it easier to understand and apply the amended rules, and allayed Iranian concerns that the UNCITRAL Rules were being changed significantly or to Iran's disadvantage.[68]

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[63] Claims Settlement Declaration, *op. cit.*, Art. III(2).

[64] Mark B. Feldman, "Drafting the Claims Settlement Agreement," in Lowenfeld *et al.*, *Revolutionary Days*, *op. cit.*, pp. 91, 99.

[65] *See* Howard M. Holtzmann, "Drafting the Rules of the Tribunal," in Caron & Crook, *The Iran-United States Claims Tribunal and the Process of International Claims Resolution*, *op. cit.*, p. 75.

[66] Brower & Brueschke, *The Iran-United States Claims Tribunal*, *op. cit.*, pp. 17–18 (noting that the Rules were changed to reflect the Tribunal's institutional character – *e.g.*, establishing a Registry and providing for substitute arbitrators and the assignment of cases to Chambers – and to conform to the requirements of the Claims Settlement Declaration – *e.g.*, composition of Chamber panels, applicable law, and cost-sharing by the Governments).

[67] Tribunal Rules, *op. cit.*, "Introduction," ¶ 1.

[68] *See* Howard M. Holtzmann, "Drafting the Rules of the Tribunal," in Caron & Crook, *The Iran-United States Claims Tribunal and the Process of International Claims Resolution*,

The Tribunal's adoption and application of the UNCITRAL Rules (as modified slightly) established their utility, flexibility, and effectiveness in cases involving public and private parties. Indeed, because the Tribunal decided so many cases, and because the practice of the Tribunal is public, the Tribunal's application of its rules "represents the most extensive body of practice concerning the UNCITRAL Rules."[69] The Tribunal's experience, in fact, undoubtedly has helped establish the UNCITRAL Rules as the preeminent *ad hoc* arbitration rules in commercial and even public international law cases.[70]

2. *Structure of the Proceedings*

The Tribunal may decide claims on the basis of written submissions alone, although either party may request that the Tribunal hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument.[71] Proceedings before the Tribunal typically include exchanges of written pleadings (statement of claim, statement of defense, reply, and rejoinder) and an oral hearing. Prehearing conferences have been held in about half of the cases in which oral hearings were held.[72] Agents for the governments may attend hearings and prehearing conferences, and non-party nationals who are involved in Tribunal proceedings with "similar issues of fact or law" also may attend, with the parties' approval.[73] Proceedings may be

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op. cit., pp. 76–77. A former Iranian member of the Tribunal noted that Iran had "suffered from lack of experience in the field of international arbitration as well as shortages of skilled manpower after the revolution which in turn was followed by one of the bloodiest wars in human history." Parviz Ansari Moin, "The Interpersonal Dynamics of Arbitral Decision-Making (III)," in *id.*, pp. 263, 264.

[69] David D. Caron, Lee M. Caplan, & Matti Pellonpää, *The UNCITRAL Arbitration Rules: A Commentary* (Oxford: Oxford Univ. Press, 2006), p. 7.

[70] *See, e.g.*, UN Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397, art. 188(2)(c) (establishing UNCITRAL Rules as default rules); Permanent Court of Arbitration Optional Rules for Arbitrating Disputes Between Two States (Oct. 20, 1992), Introduction, *available at* www.pca-cpa.org (borrowing from UNCITRAL Rules and noting: "Experience in arbitrations since 1981 suggests that the UNCITRAL Arbitration Rules provide fair and effective procedures for peaceful resolution of disputes between States concerning the interpretation, application and performance of treaties and other agreements, although they were originally designed for commercial arbitration."); North American Free Trade Agreement, U.S.-Canada-Mexico, Dec. 17, 1992, 32 I.L.M. 289 (1992), art. 1120(1) (authorizing a disputing investor to submit the claim to arbitration under the UNCITRAL Rules).

[71] Tribunal Rules, *op. cit.*, Art. 15(2).

[72] *See* Iran-United States Claims Tribunal Communiqué, *op. cit.*, p. 2.

[73] Tribunal Rules, *op. cit.*, note 5 to Art. 25.

bifurcated between jurisdiction and merits.[74] Following deliberations, which are held in secret, the Tribunal issues a reasoned decision or award, which is then published.[75]

Publication of the Tribunal's decisions and awards proved enormously important. The UNCITRAL Rules allow for the publication of awards "only with the consent of both parties," reflecting the confidential commercial context for which they were devised.[76] It would have been difficult, however, to obtain the parties' consent to publish in every case before the Tribunal. It also was recognized that published awards "would promote unity of approach among arbitrators, would guide successive disputants through the process, would promote settlement, and would enable scholars and other commentators to examine the doctrine applied."[77] The Tribunal thus agreed, over Iran's objection, to modify the UNCITRAL Rules to allow publication of awards.[78] The Tribunal agreed to allow parties to request certain redactions to the award, to eliminate "the identity of the parties, other identifying facts and trade or military secrets."[79] In practice, though, few parties requested such redactions.

3. *Third-Party Intervention and Amicus Submissions*

Iran and the United States may submit oral or written statements in cases in which they are not parties if the Tribunal determines that such submissions would help it carry out its work.[80] The United States occasionally availed itself of this opportunity to intervene in cases involving U.S. nationals.[81] The Tribunal also may accept statements from private individuals or entities who are not parties to the case, but only "under special circumstances."[82] In practice,

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[74] *Id.* Art. 21(4).

[75] *Id.*, note 2 to Art. 31. The amendment to the UNCITRAL Rule to allow for publication was adopted by a majority of the Tribunal, over Iran's objections. *See* Holtzmann, "Drafting the Rules of the Tribunal," in Caron & Crook, *The Iran-United States Claims Tribunal and the Process of International Claims Resolution*, *op. cit.*, p. 83.

[76] UNCITRAL Arbitration Rule (1976), Art. 32(5).

[77] Jack J. Coe, Jr., "The Tribunal's Transparency Features: Some Observations," in Drahozal & Gibson, *The Iran-U.S. Claims Tribunal at 25, op. cit.*, pp. 119, 127.

[78] *See* Howard M. Holtzmann, "Drafting the Rules of the Tribunal," in Caron & Crook, *The Iran-United States Claims Tribunal and the Process of International Claims Resolution*, *op. cit.*, p. 83.

[79] Tribunal Rules, *op. cit.*, Art. 32(5) (as modified).

[80] *Id.*, note 5 to Art. 15.

[81] *See* Jacomijn J. van Hof, *Commentary on the UNCITRAL Arbitration Rules: The Application by the Iran-U.S. Claims Tribunal* (The Hague: Kluwer, 1991), pp. 107–108 (discussing cases).

[82] Tribunal Rules, *op. cit.*, note 2 to Art. 15.

nonparty submissions were rare, in part because the absence of an open Tribunal docket made it difficult for nonparties to monitor Tribunal cases and spot common issues.[83] The Tribunal's early efforts to promote transparency nonetheless presaged recent developments in investor-state arbitrations.[84]

4. *Remedies*

The Tribunal generally awards money damages, although it may award other forms of relief, including specific performance. The Tribunal also may request that Iran or the United States take any action necessary to bring itself into compliance with obligations under the Algiers Declarations.[85] To that end, and in keeping with the jurisprudence of other international courts and tribunals, the Tribunal may fashion appropriate remedies for a party's breach of the Algiers Declarations.[86]

5. *Interim Measures of Protection*

Under the Tribunal Rules, the Tribunal may issue interim measures of protection "in respect of the subject-matter of the dispute."[87] In practice, the Tribunal has interpreted its authority more broadly, concluding that it has "inherent authority" not just to conserve the rights of the parties with respect to the subject-matter of the dispute but also to ensure that the "Tribunal's

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[83] *See* Stewart A. Baker & Mark D. Davis, "Arbitral Proceedings Under the UNCITRAL Rules – The Experience of the Iran-United States Tribunal," 23 *George Washington Journal of International Law & Econ.* (1989–1990), pp. 295–96 (citing cases); Caron, Caplan, & Pellonpää, *The UNCITRAL Arbitration Rules*, *op. cit.*, pp. 51–58 (collecting cases).

[84] *See* Coe, "The Tribunal's Transparency Features," in Drahozal & Gibson, *The Iran-U.S. Claims Tribunal at 25, op. cit.*, pp. 132–34.

[85] *See*, *e.g.*, *Islamic Republic of Iran v. United States of America*, Award No. 306-A15(I:G)-FT (May 4, 1987), 14 *Iran-U.S. Cl. Trib. Rep.*, pp. 311, 318 (ordering the United States to "cause the Federal Reserve Bank of New York to transfer immediately" to Iran funds in a dollar account established under the Algiers Declarations to pay off syndicated bank loans made to or guaranteed by Iran).

[86] *See, e.g.*, *United States of America v. Islamic Republic of Iran*, Decision No. DEC 132-A33-FT, *op. cit.*, p. 17 (citing *Rainbow Warrior Case* (New Zealand v. France), 20 R.I.A.A., pp. 217, 270 (France-New Zealand Arb. Trib. 1990); *LaGrand Case* (Germany v. U.S.) 40 *International Legal Materials*, pp. 1069, 1082 (I.C.J. 2001); *Chorzów Factory Case* (Germany v. Poland), 1927 P.C.I.J. (ser. A) No. 8, p. 25 (July 26)).

[87] Article 26 provides in relevant part: "At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods." Tribunal Rules, *op. cit.*, Art. 26(1).

jurisdiction and authority are made fully effective."[88] The Tribunal may take interim measures if it finds that (1) it has *prima facie* jurisdiction over the subject matter; (2) the measures are necessary to prevent irreparable harm or to avoid prejudice to the Tribunal's jurisdiction; and (3) exigent circumstances justify interim measures being taken prior to a final decision on the merits.[89] The Tribunal routinely has issued interim measures of protection both to protect property and evidence[90] and to deal with parallel proceedings, including by calling upon Iranian courts to cease domestic proceedings.[91] The Tribunal has declined requests for interim measures, however, when the other proceedings at issue involved different parties or contracts, when continuance of other proceedings did not threaten irreparable harm, or when the party agreed not to actively pursue another proceeding pending the Tribunal's disposition of its case.[92]

6. *Choice of Forum*

The Claims Settlement Declaration excludes from the Tribunal's jurisdiction 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…."[93] Many claims filed with the Tribunal were based on contracts that in one way or another called for adjudication in Iranian courts. Rather than adjudicating choice-of-forum provisions in every such case, the Full Tribunal selected as test cases nine claims that presented seventeen representative forum selection clauses. The Tribunal's three Chambers then applied the decisions from these test cases in almost every subsequent case that raised a forum selection issue.[94] (Despite suggestions

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[88] *E-Systems, Inc. v. Islamic Republic of Iran*, Interim Award No. ITM 13-388-FT (Feb. 4, 1983), 2 *Iran-U.S. Cl. Trib. Rep.*, pp. 51, 57.

[89] *See* Brower & Brueschke, *The Iran-United States Claims Tribunal*, *op. cit.*, p. 218.

[90] *See, e.g.*, *Behring International, Inc. v. Islamic Republic Iranian Air Force*, Interim/Interlocutory Award No. ITM/ITL 52-382-3 (June 21, 1985), 8 *Iran-U.S. Cl. Trib. Rep.*, pp. 238, 275 (concluding that "the conservation of both the goods and the rights of the Parties requires that Respondents' property be transferred to an alternative location").

[91] *See, e.g., E-Systems, Inc. v. Islamic Republic of Iran*, *op. cit.*, p. 57 (requesting that Iran move for a stay of proceedings before the Public Court of Tehran until the proceedings before the Tribunal had been completed).

[92] *See* Sean D. Murphy, "Interim Measures of Relief: The Continuing Importance of the Iran-United States Claims Tribunal's Jurisprudence," in Drahozal & Gibson, *The Iran-U.S. Claims Tribunal at 25*, *op. cit.*, pp. 75, 76.

[93] Claims Settlement Declaration, *op. cit.*, Art. II(1).

[94] *See* Brower & Brueschke, *The Iran-United States Claims Tribunal*, *op. cit.*, pp. 61, 69 (citing cases); s*ee also Oil Field of Texas, Inc. v. Iran*, Interlocutory Award No. ITL 10-43-FT (Dec. 7–8, 1982), 1 *Iran-U.S. Cl. Trib. Rep.*, p. 347 (test case decision by Full Tribunal concerning

from U.S.-appointed arbitrators, the Tribunal generally declined to adopt additional test cases or employ other case-management techniques to speed the processing of claims, preferring to address claims case-by-case.)[95]

7. *Language*

The Claims Settlement Declaration failed to specify the languages of the Tribunal. The Tribunal Rules, however, reflect an agreement reached by Iran and the United States that English and Farsi (Persian) would be "the official languages to be used…for all oral hearings, decisions, and awards."[96] Arbitrating parties thus are required to prepare pleadings and annexes in both languages.[97] The Tribunal determines "what other documents, documentary exhibits and written evidence, or what parts thereof" must be submitted in both languages.[98] The Tribunal established useful Guidelines for the Translation of Documentary Evidence, so that the parties do not unnecessarily incur the expense of translating all documents in all cases.[99] The Tribunal also established a Division of Language Services within its Secretariat to assist the Tribunal with translating documents, interpreting oral communications, and resolving any language disputes between parties.

D. *The Tribunal's Jurisprudence*

The Tribunal's awards, decisions, and significant orders, which currently fill thirty-eight volumes of the *Iran-United States Claims Tribunal Reports*, have

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jurisdiction over claims involving contracts with the Oil Services Company of Iran). The Tribunal's innovative approach to test cases has impacted the practice of other international adjudicative bodies, including the United Nations Compensation Commission.

[95] *See, e.g.*, Concurring Opinion of Richard M. Mosk in *Alcan Aluminum Ltd. v. Ircable Corp.*, Award No. 41-91-3 (May 3, 1983), 2 *Iran-U.S. Cl. Trib. Rep.*, pp. 294, 301–02 (criticizing Tribunal's failure to adopt "modern or innovative case-resolution techniques," including "for joinder or consolidation of cases; for coordination of cases; for intervention; for representative or class claims; for the application of a decision in one case to other cases; for the elimination of unnecessary pleadings; for meaningful discovery; for the use of special masters; or for the elimination of various formal procedures for the claims of less than $250,000…"). *See also* Howard M. Holtzmann, "Drafting the Rules of the Tribunal," in Caron & Crook, *The Iran-United States Claims Tribunal and the Process of International Claims Resolution*, *op. cit.*, pp. 92–93.

[96] Tribunal Rules, *op. cit.*, note 2 to Art. 17.

[97] *Id.* at note 3 to Art. 17.

[98] *Id.* at note 4 to Art. 17.

[99] *Reprinted in* Caron & Crook, *The Iran-United States Claims Tribunal and the Process of International Claims Resolution*, *op. cit.*, p. 327.

been characterized as "[t]he most important body of international arbitration jurisprudence," whose significance "as persuasive authority is second to none."[100] This jurisprudence serves as an essential resource for arbitrators, scholars, and practitioners on a vast array of issues, including in matters of treaty interpretation; nationality; exchange controls; wrongful expulsions; evidentiary practices; interim measures of protection; nationalizations, expropriations, and takings; standards of compensation; valuation of businesses and other property; *force majeure*; interest; currency conversion; challenges to arbitrators; and commercial claims.[101]

1. *Taking of Property*

The Tribunal's takings jurisprudence is perhaps its greatest contribution to international law.[102] The Tribunal was called upon to resolve a large number of takings claims arising from the tumultuous events of the Islamic Revolution and involving numerous state and non-state actors. The Claims Settlement Declaration gave the Tribunal jurisdiction over claims arising out of "expropriations" and "other measures affecting property rights."[103] The Tribunal's jurisdictional mandate, therefore, exceeds that of most international investment agreements. The Tribunal's expropriation-specific jurisprudence nonetheless remains relevant to investment treaty arbitration, in several respects.[104]

a. *Standard for Establishing an Expropriation*

First, the Tribunal helped clarify the international law standard for determining whether an indirect expropriation has occurred. The Tribunal began

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[100] Roger P. Alford, "The American Influence on International Arbitration," 19 *Ohio State Journal on Dispute Resolution* 69 (2003–2004), p. 86; *see also* Andreas F. Lowenfeld, Review of George H. Aldrich, *The Jurisprudence of the Iran-United States Claims Tribunal*, 92 *American Journal of International Law*, p. 149 (noting that the Tribunal "has built up perhaps the largest corpus ever of decisions based on international law").

[101] *See* Christopher S. Gibson & Christopher R. Drahozal, "Iran-U.S. Claims Tribunal Precedent in Investor-State Arbitration," in Drahozal & Gibson, *The Iran-U.S. Claims Tribunal at 25*, *op. cit.*, pp. 1, 13.

[102] *See* Brower & Brueschke, *The Iran-United States Claims Tribunal, op. cit.*, p. 369.

[103] Claims Settlement Declaration, *op. cit.*, art. II(1). For cases in which the Tribunal found interference with the Claimant's property rights but no taking, see, for example, *Eastman Kodak Co. v. Government of Iran*, Partial Award No. 329-227/12384-3 (Nov. 11, 1987), 17 *Iran-U.S. Cl. Trib. Rep.*, p. 153; *Seismograph Service Corp. v. National Iranian Oil Co.*, Award No. 420-443-3 (Dec. 22, 1988), 22 *Iran-U.S. Cl. Trib. Rep.*, p. 3.

[104] S*ee* Andrea J. Menaker, "The Enduring Relevance of the Expropriation Jurisprudence of the Iran-U.S. Claims Tribunal for Investor-State Arbitrations," in Drahozal & Gibson, *The Iran-U.S. Claims Tribunal at 25, op. cit.*, p. 335.

deciding claims for takings of property in 1983, and to date has rendered approximately sixty awards on this subject. Relatively few of those claims have involved a formal expropriation of property, and thus most of the Tribunal's decisions on takings relate to indirect expropriation.[105] Iran and the United States, unsurprisingly, had different conceptions about the property rights entitled to protection at the Tribunal, with the United States arguing for a broad range of property rights to be protected, and Iran seeking to limit the range to a narrower class to be decided under municipal law. The Tribunal treated as objects of expropriation a broad array of property interests, including tangible property, contractual rights, and majority and minority shareholdings.[106]

The Tribunal gave public international law two of its most cited expropriation principles.[107] In *Starrett*, the Tribunal helped clarify the degree of interference required to establish an expropriation.[108] In that case, the Government of Iran had appointed a "temporary manager" of the Iranian firm in which the Claimant owned a majority of the shares. The Tribunal held that "measures taken by a State can interfere with property rights to such an extent that these rights are rendered so useless that they must be deemed to have been expropriated, even though the State does not purport to have expropriated them and the legal title to the property formally remains with the original owner."[109]

In *Tippetts*, the Tribunal helped define the degree of interference that is required to give rise to state responsibility for a taking.[110] That case also dealt with the expropriatory effects of Iran's appointment of a temporary manager in the absence of a direct taking by the state. The Tribunal held:

> A deprivation or taking of property may occur under international law through interference by a state in the use of that property or with the enjoyment of its benefits, even where legal title to the property is not affected.

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[105] *See* Maurizio Brunetti, "The Iran-United States Claims Tribunal, NAFTA Chapter 11, and the Doctrine of Indirect Expropriation," 2 *Chi. J. Int'l L.*, pp. 203, 205 (2001).

[106] *See* Mark R. Joelson, "The Contributions of the Iran-United States Claims Tribunal to the International Law on Expropriation," in Gibson & Drahozal, *The Iran-U.S. Claims Tribunal at 25, op. cit.*, pp. 215, 221.

[107] *See* Menaker, "The Enduring Relevance of the Expropriation Jurisprudence of the Iran-U.S. Claims Tribunal for Investor-State Arbitrations," in Gibson & Drahozal, *The Iran-U.S. Claims Tribunal at 25*, *op. cit.*, pp. 339–43 (citing cases).

[108] *Starrett Housing Corp. v. Government of the Islamic Republic of Iran*, Interlocutory Award No. ITL 32-24-1 (Dec. 19, 1983), 4 *Iran-U.S. Cl. Trib. Rep.*, p. 122.

[109] *Id.* at p. 154.

[110] *Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran*, Award No. 141-7-2 (June 29, 1984), 6 *Iran-U.S. Cl. Trib. Rep.*, p. 219.

> While assumption of control over property by a government does not automatically and immediately justify a conclusion that the property has been taken by the government, thus requiring compensation under international law, such a conclusion is warranted whenever events demonstrate that the owner was deprived of fundamental rights of ownership and it appears that the deprivation is not merely ephemeral. The intent of the government is less important than the effects of the measures on the owner, and the form of the measures of control or interference is less important than the reality of their impact.[111]

b. *Attribution*

Second, the Tribunal helped clarify when an expropriatory act may be attributed to a government for international law purposes.[112] Attribution was a critical issue for U.S. Claimants, as many of the acts they complained of were committed by Iranian entities with varying connection to the Iranian government. The Tribunal was given broad authority to hear claims against not just the U.S. and Iranian governments but also their political subdivisions and any agencies, instrumentalities, and entities under their control.[113] Consistent with international law, however, the Tribunal required Claimants to establish that specific acts complained of were attributable to the state and that there was a sufficient link to the Claimant's loss to hold the state responsible for that loss.[114]

The Tribunal consistently attributed to Iran acts, *de facto* and *de jure*, of Iranian ministries, officials, and organs.[115] The Tribunal also addressed

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[111] *Id.* at pp. 225–26; *see also Sedco, Inc. v. National Iranian Oil Co.*, Interlocutory Award No. ITL 55-129-3 (Oct. 28, 1985), 9 *Iran-U.S. Cl. Trib. Rep.*, pp. 248, 278–79 ("When, as in the instant case, it also is found that on the date of the government appointment of 'temporary' managers there is no reasonable prospect of return of control, a taking should conclusively be found to have occurred as of that date."); *Harold Birnbaum v. Islamic Republic of Iran*, Award No. 549-967-2 (July 6, 1993), 29 *Iran-U.S. Cl. Trib. Rep.*, pp. 260, 267–68 (citing several Tribunal cases concerning indirect expropriation and appointment of temporary managers).

[112] *See* Joelson, "The Contributions of the Iran-United States Claims Tribunal to the International Law on Expropriation," in Drahozal & Gibson, *The Iran-U.S. Claims Tribunal at 25, op. cit.*, p. 215.

[113] Claims Settlement Declaration, *op. cit.*, Art. VII(3)–(4).

[114] *See* Brower & Brueschke, *The Iran-United States Claims Tribunal*, *op. cit.*, pp. 442, 457–61; *see also J.I. Case Co. v. Islamic Republic of Iran*, Award No. 57-244-1 (June 15, 1983), 3 *Iran-U.S. Cl. Trib. Rep.*, pp. 62, 65 ("There may have been a number of other factors – civil unrest, strikes or disruptions of the sort which accompany a revolution – any of which might have contributed to or resulted" in the loss suffered.)

[115] *See, e.g., Amoco International Finance Corp. v. The Government of the Islamic Republic of Iran*, Partial Award No. 310-56-3, *op. cit.*, pp. 189, 289 (implicitly attributing to Iranian government expropriation arising from the nationalization of the Iranian oil industry); s*ee also* David D. Caron, "The Basis of Responsibility: Attribution and Other Transubstantive

entities "controlled by the Government" but that were not part of the formal structure of the state. In *Alfred L.W. Short*, for instance, the Tribunal concluded that, following a revolution, a successor government is "held responsible for the acts imputable to the revolutionary movement which established it, even if those acts occurred prior to its establishment, as a consequence of the continuity existing between the new organization of the State and the organization of the revolutionary movement."[116] In *Yeager*, the Tribunal confirmed that the government is responsible for acts of individuals if they exercised "elements of governmental authority in the absence of the official authorities and in circumstances which justified the exercise of those elements of authority."[117]

The Tribunal, however, held that the acts of Islamic Workers' Councils – which were created, by law, to "ensure Islamic equity and cooperation" in the workplace – were not attributable to the Iranian government, even when those councils injured Claimants' business interests.[118] Similarly, the Tribunal declined to attribute to the Iranian government acts of private companies absent proof that government acts had unreasonably interfered with the Claimant's contract rights.[119]

c. *Standard of Compensation for a Taking*

Third, the Tribunal clarified the standard of compensation for a taking. When the Tribunal began its work, fierce debate raged over the continued applicability of the traditional "Hull Doctrine," which called for prompt, adequate, and effective compensation for a taking by a state. In the 1960s

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Rules of State Responsibility," in Lillich & Magraw, *The Iran-United States Claims Tribunal: Its Contribution to the Law of State Responsibility*, *op. cit.*, pp. 109, 130.

[116] *Alfred L.W. Short. v. Islamic Republic of Iran*, Award No. 312-11135-3 (July 14, 1987), 16 *Iran-U.S. Cl. Trib. Rep.*, pp. 76, 84 (citation omitted).

[117] *Kenneth P. Yeager v. Islamic Republic of Iran*, Award No. 324-10199-1 (Nov. 2, 1987), 17 *Iran-U.S. Cl. Trib. Rep.*, pp. 92, 103. *See also id.* at 104 (finding sufficient evidence to establish a presumption that, after Feb. 1979, the Revolutionary Guards "were acting in fact on behalf of the new government, or at least exercised elements of governmental authority in the absence of official authorities, in operations of which the new Government must have had knowledge and to which it did not specifically object") (citation omitted).

[118] *See, e.g., Schering Corp. v. Islamic Republic of Iran*, Award No. 122-38-3 (Apr. 16, 1984), 5 *Iran-U.S. Cl. Trib.* Rep., pp. 361, 370 (finding that "there is no evidence in this case that the Workers' Council in fact acted on behalf of the Government of Iran or any of its agencies or entities, that there was any governmental influence over the election of the members of the Council, that any governmental orders, directives or recommendations were issued to the Council or that it acted under the instructions of any governmental body.") (citation omitted).

[119] *See, e.g.*, *International Technical Products Corp. v. Government of the Islamic Republic of Iran*, Award No. 196-302-3 (Oct. 28, 1985), 9 *Iran-U.S. Cl. Trib. Rep.*, pp. 206, 238.

and 1970s, states from the developing world and socialist bloc propounded the New International Economic Order-inspired standard of "appropriate compensation."[120] The Tribunal might have avoided the debate by applying the 1955 Treaty of Amity between Iran and the United States, which required the states parties to pay "just compensation" equal to "the full equivalent of the property taken."[121] Iran contended, however, that the Treaty of Amity was no longer in force and that the Hull Doctrine had been repudiated by modern developments in international law, which allowed for "partial" compensation for a taking.[122] The Tribunal preferred to avoid antagonizing Iran over this sensitive issue, and found that it could reach identical substantive results by applying customary international law instead of the Treaty of Amity.[123] This approach, although criticized by the U.S.-appointed arbitrators, had the salutary effect of helping end the debate in customary international law concerning the proper standard of compensation for a taking. The Tribunal ultimately came around to applying the Treaty of Amity standard, confirming that the standards under customary law and the Treaty of Amity are in fact the same.[124]

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[120] Charter of Economic Rights and Duties of States, G.A. Res. 3281 (XXIX) (Dec. 12, 1974), art. 2(2)(c) (proclaiming each state's right to "nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent"). An earlier resolution, "Permanent Sovereignty over Natural Resources," similarly had urged an "appropriate compensation" standard for expropriations, but made it clear that such compensation must be "in accordance with international law." G.A. Res. 1803 (XVII) (Dec. 14, 1962), ¶ 4. *See also* Separate Opinion of Judge Brower in *Sedco, Inc. v. National Iranian Oil Co.*, Interlocutory Award No. ITL 59-129-3 (Mar. 27, 1986), 10 *Iran-U.S. Cl. Trib. Rep.*, pp. 180, 189–206.

[121] Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, art. IV(2), *signed* Aug. 15, 1955, *entered into force* June 16, 1957, 8 U.S.T. 900, 93 T.I.A.S. No. 3853, 284 U.N.T.S. 93.

[122] *See, e.g.*, *American International Group, Inc. v. Islamic Republic of Iran*, Award No. 93-2-3 (Dec. 19, 1983), 4 *Iran-U.S. Cl. Trib. Rep.*, pp. 96, 106.

[123] Nils Mangård, "The Interpersonal Dynamics of Arbitral Decision-Making (II)," in Caron & Crook, *The Iran-United States Claims Tribunal and the Process of International Claims Resolution*, *op. cit.*, pp. 253, 259 (noting desire to avoid antagonizing Iran); *see also Sedco, Inc. v. National Iranian Oil Co.*, Interlocutory Award No. ITL 59-129-3, *op. cit.*, pp. 180, 187 ("Opinions both of international tribunals and of legal writers overwhelming support the conclusion that under customary international law in a case such as here presented – a discrete expropriation of alien property – full compensation should be awarded for the property taken. This is true whether or not the expropriation itself was otherwise lawful.") (citations omitted); *Sola Tiles, Inc. v. Government of the Islamic Republic of Iran*, Award No. 298-317-1 (Apr. 22, 1987), 14 *Iran-U.S. Cl. Trib. Rep.*, pp. 223, 234 (confirming that customary law and the Treaty of Amity require the same standard of compensation).

[124] *See Phelps Dodge Corp. v. Islamic Republic of Iran*, Award No. 217-99-2 (Mar. 19, 1986), 10 *Iran-U.S. Cl. Trib. Rep.*, pp. 121, 132 (holding that regardless of whether the Treaty of

2. *Development of Transnational Commercial Law*

The Tribunal also made substantial contributions to the development of transnational commercial law.[125] The Tribunal typically declined to apply Iranian or U.S. law in its awards and decisions, even when the parties' contracts called for the application of such municipal law. Instead, in commercial cases, the Tribunal often applied the terms of the applicable contract or, in the absence of a contract or clear rule of decision, general principles of commercial law.[126] Although the Tribunal's judges approached their work from their common law, civil law, and Islamic law backgrounds, they discovered a remarkable convergence of general principles of commercial law (or *lex mercatoria*) on many issues.[127]

The Tribunal had ample opportunity to develop, for example, the principle of *force majeure*,[128] as virtually all of the cases brought before the Tribunal arose during or in the wake of the Islamic Revolution. Indeed, the Tribunal found that conditions in Iran's major cities at that time had created "classic *force majeure* conditions," which the Tribunal defined as "social and economic forces beyond the power of the state to control through the exercise of due diligence."[129]

Amity was in effect at the time of the award, it was "clearly applicable to the investment at issue in this Case at the time the claim arose," and thus was a "relevant source of law on which the Tribunal is justified in drawing in reaching its decision"); *Amoco International Finance Corp. v. Government of the Islamic Republic of Iran*, Partial Award No. 310-56-3, *op. cit.*, pp. 189, 222.

[125] *See* Maurizio Brunetti, "The *Lex Mercatoria* in Practice: The Experience of the Iran-United States Claims Tribunal," 18 *Arbitration International*, pp. 355, 358 (2002) (citing cases).

[126] *See* John R. Crook, "Applicable Law in International Arbitration, The Iran-U.S. Claims Tribunal Experience," 83 *American Journal of International Law*, pp. 278, 280 (1989).

[127] *See* Brower & Brueschke, *The Iran-United States Claims Tribunal*, *op. cit.*, p. 669 ("It has been the surprising unanimity among all Members of the Tribunal on basic commercial law issues…that makes it truly possible to avoid resolving issues of governing law in commercial matters. Very soon the Iranian, American and third-country colleagues discovered that there were very few, if any, differences among them on basic issues such as principles of contract formation, contract interpretation, allowable damages and the like."); Aldrich, *The Jurisprudence of the Iran-United States Claims Tribunal*, *op. cit.*, p. 156 ("The Tribunal consciously tried, I believe, to promote the development of such a *lex mercatoria*."); Remarks of Robert Briner, in Lowenfeld *et al.*, *Revolutionary Days*, *op. cit.*, p. 165 (noting convergence of views on substantive law, but differences on procedural issues).

[128] The Tribunal concluded that *force majeure* is recognized by all, or almost all, legal systems, and thus is a "general principle of law." *Anaconda-Iran, Inc. v. Government of the Islamic Republic of Iran*, Interlocutory Award No. INL65-167-3 (Dec. 10, 1986), 13 *Iran-U.S. Cl. Trib. Rep.*, pp. 199, 211.

[129] *Gould Marketing, Inc. v. Ministry of National Defense of Iran*, Interlocutory Award No. ITL 24-49-2, 3 *Iran-U.S. Cl. Trib. Rep.*, pp. 147, 153.

The Tribunal acknowledged that investors in Iran, like investors everywhere, must "assume a risk that the country might experience strikes, lockouts, disturbances, changes of the economic and political system and even revolution," and it concluded that the materialization of those risks "does not necessarily mean that property rights affected by such events can be deemed to have been taken."[130] "Injuries caused by the operation at such forces," the Tribunal concluded, are "not attributable to the state for purposes of its responding for damages."[131]

As between private parties, moreover, the Tribunal concluded that "one party cannot claim against the other for injuries suffered as a result of delays in or cessation of performance during the time *force majeure* conditions prevail, unless the existence of these conditions is attributable to the fault of the Respondent party."[132] As such, where *force majeure* existed with respect to a particular contractual obligation, the Tribunal has consistently held that, during the relevant period, performance was suspended and non-performance by the affected party was excused.[133]

That said, the Tribunal recognized that the defense of *force majeure* is "an exception to the obligation to perform," and thus the party invoking it bears the burden of proving it.[134] The Tribunal further cautioned that "[t]he invocation of *force majeure* as an excuse for failure to perform under a contract must always be analyzed in the context of the circumstances causing the *force majeure*, taking into account the particular party affected by those circumstances and the specific obligations that party is prevented from performing."[135]

Beyond *force majeure*, the Tribunal developed other, related principles of transnational law, including principles of impossibility, hardship, and frustration.[136] The Tribunal also developed many principles concerning commercial contract claims, including issues of payment, contract formation, contract termination, construction, performance, breach, and repudiation.[137] The Tribunal's published awards, decisions, and orders, in fact, "have contributed the largest single corpus of precedent in…commercial law [] produced by

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[130] *Starrett Housing Corp. v. Government of the Islamic Republic of Iran*, *op. cit.*, p. 156.
[131] *Gould Marketing, Inc. v. Ministry of National Defense of Iran*, *op. cit.*, p. 153.
[132] *Id.*
[133] Brunetti, "The *Lex Mercatoria* in Practice," *op. cit.*, pp. 363–64 (citing cases).
[134] *Sylvania Technical Systems, Inc. v. Government of the Islamic Republic of Iran*, Award No. 180-64-1 (June 27, 1985), 8 *Iran-U.S. Cl. Trib. Rep.*, pp. 298, 312.
[135] *Id.* at 309.
[136] Brunetti, "The *Lex Mercatoria* in Practice," *op. cit.*, p. 363.
[137] *Id.* p. 357.

any international claims body"[138] and, as such, "are a key source of the *lex mercatoria*."[139]

3. *Legacy of the Tribunal's Jurisprudence*

Recent empirical evidence has confirmed the continued relevance of the Tribunal's jurisprudence. For cases decided under the auspices of the International Centre for Settlement of Investment Disputes, for instance, forty-five percent of awards on the merits and twenty percent of awards and decisions on jurisdiction cited Tribunal precedent.[140] For cases brought under NAFTA's investment chapter, more than seventy-five percent of submissions on the merits and forty-five percent of submissions on jurisdiction cited Tribunal precedent.[141] Tribunal precedent, therefore, clearly remains an enormously important resource for arbitrators in investment treaty arbitrations and an indispensable resource for counsel in those cases.

Tribunal precedent, moreover, shows no sign of diminishing in importance. Empirical research, in fact, found "little evidence that the precedential value of Tribunal awards has depreciated over time or that Tribunal awards are being wholly displaced by the increasing stock of ICSID awards."[142] To the contrary, "both theory and practice confirm the importance of Tribunal jurisprudence in investor-State arbitration."[143]

Beyond its jurisprudence, the Tribunal produced a large international cadre of legal professionals skilled in mass claims processing, who brought their skills and experience to other international courts, tribunals, commissions, and arbitral institutions, including the International Court of Justice, the Permanent Court of Arbitration, the Claims Resolution Tribunal for Dormant Accounts in Switzerland, and the United Nations Compensation Commission.[144]

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[138] Brower & Brueschke, *The Iran-United States Claims Tribunal*, *op. cit.*, p. 669.

[139] Brunetti, "The *Lex Mercatoria* in Practice," *op. cit.*, p. 358.

[140] *See* Christopher S. Gibson & Christopher R. Drahozal, "Iran-U.S. Claims Tribunal Precedent in Investor-State Arbitration," in Drahozal & Gibson, *The Iran-U.S. Claims Tribunal at 25*, *op. cit.*, pp. 1, 27.

[141] *Id.*

[142] *Id.*

[143] *Id.*

[144] *See* Jeffrey L. Bleich, "Reflections on the Tribunal's Waning Years," in Caron & Crook, *The Iran-United States Claims Tribunal and the Process of International Claims Resolution*, *op. cit.*, pp. 345, 352 (noting that at least eight Tribunal alumni had joined the UN Compensation Commission); Howard M. Holtzmann & Edda Kristjánsdóttir eds., *International Mass Claims Processes: Legal and Practical Perspectives* (New York: Oxford University Press, 2007); John Crook, comments in *Revolutionary Days*, *op. cit.*, p. 189 ("I think from

E. *Conclusion*

Thirty years on, the Tribunal is the longest running international arbitration body in history. In that time, the Tribunal has played a decisive role in promoting the progressive development of international law and arbitration. As recently as 1975, just six years before the Tribunal's creation, leading commentators could state:

> The Law of International Claims, sometimes called the diplomatic protection of citizens abroad or the responsibility of States for injury to aliens, always has been one of the most controversial areas of international law. Traditional doctrine maintains that only states can be subjects of international law and that individuals (and other private parties), not having such status, cannot bring international claims against foreign States when injured by them. Instead, under the theory that whoever wrongs an individual indirectly injures his State, an aggrieved Claimant must seek redress by convincing his government to adopt his private grievance and to espouse it as an international claim against the offending foreign State. Absent such espousal, the individual unhappily has no direct access to the international legal order.[145]

This now reads like distant history. The 2,500 or so bilateral and multilateral investment agreements currently in force typically permit aggrieved Claimants to prosecute covered claims directly before international arbitral tribunals, just as Claimants before the Iran-U.S. Claims Tribunal have done since 1981. The Tribunal conclusively established the efficacy, as well as the fairness, of this form of direct international adjudication over traditional diplomatic espousal.

The Tribunal, of course, has not been an unqualified success. Over the years, Iran and the United States have remained adversaries, and their recurring conflicts – political, economic, and military – undoubtedly have negatively affected the Tribunal's work.[146] Many of the criticisms leveled against the Tribunal, in fact, may be traced to the enduring acrimony between Iran and the United States:

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start to finish, the (UN) Compensation Commission was constructed with an eye on the lessons that been learned, positive and negative, from the Iran-U.S. claims tribunal.").

[145] Lillich & Weston, *International Claims: Their Settlement by Lump Sum Agreements*, *op. cit.*, vol. 1, p. 1 (internal quotation marks and citations omitted).

[146] *See* Moin, "The Interpersonal Dynamics of Arbitral Decision-Making (III)," in Caron & Crook, *The Iran-United States Claims Tribunal and the Process of International Claims Resolution*, *op. cit.*, p. 263 ("The Iran-United States Claims Tribunal came into existence and continued to exist during the height of hostilities between … Iran, a Muslim country newly emerged from one of the greatest revolutions in the world, and the United States, a country with a well-established history in international arbitration.").

- Unanimous decisions in disputed cases have been rare, contrary to the practice of most arbitral tribunals.
- Iranian members have never voted against the position of Iranian parties.[147]
- Dissenting opinions have been so critical of the Tribunal as to undermine its integrity.[148]
- Tribunal members have been challenged routinely, often for spurious reasons.[149]
- The Tribunal often has "split the baby," or avoided making controversial rulings, in an effort to prevent Iran from withdrawing from the Tribunal.[150]

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[147] *See* Lowenfeld, Book Review, *op. cit.*, pp. 149, 150 (noting that "the Iranian judges never vote against the Iranian party, and the American judges rarely vote against the American Claimants"). A former U.S. member of the Tribunal noted, however, that U.S.-appointed members voted against the U.S. party on all of its claims in more than 30% of contested Tribunal cases and on at least one of its claims in more than 60 percent of such cases. Letter of Richard C. Allison, 92 *Am. J. Int'l L.* (1998), pp. 488–89.

[148] *See, e.g.*, Declaration of the Iranian Arbitrators in *Iran v. United States*, *Case No. A/18* (Apr. 6, 1984), 5 *Iran-U.S. Cl. Trib. Rep.*, pp. 251, 266 ("The present Decision is yet another clear manifestation of a bad faith interpretation rendered by this Tribunal. The composition of the so-called neutral arbitrators, itself the result of the imposed mechanism of the UNCITRAL Rules, is so unbalanced as to have made the Tribunal lose all credibility to adjudicate any dispute between the Islamic Republic of Iran, as a Third World revolutionary country, and the United States, as the symbol of the world capitalism."). *But see* Coe, "The Tribunal's Transparency Features," in Drahozal & Gibson, *The Iran-U.S. Claims Tribunal at 25, op. cit.*, pp. 128–29 ("Concurring and dissenting opinions may play an important role in alerting observers to subtle but important aspects of the case, and may perform a whistle-blower function in instances where gross misadventure was afoot.").

[149] *See* Caron, Caplan & Pellonpää, *The UNCITRAL Arbitration Rules*, *op. cit.*, pp. 187–93 (discussing the bases for challenges at the Tribunal). Iran had a fundamentally different conception of arbitrator independence, as evidenced by the Jan. 1, 1982, letter from the Iranian Agent to Judge Mangård, stating that "the Islamic Republic of Iran hereby disqualifies (Judge Mangård) as 'neutral' arbitrator." In response, the Tribunal "decided that, consistent with the Claims Settlement Declaration, the only method by which an arbitrator, once appointed, may be removed from office is through challenge by a High Contracting Party and decision by the Appointing Authority pursuant to Articles 10–12 of the UNCITRAL Rules." *Decision of the Full Tribunal re Judge Mangård* (Jan. 15, 1982), 1 *Iran-U.S. Cl. Trib. Rep.*, pp. 111, 114.

[150] Brower & Brueschke, *Iran-United States Claims Tribunal*, *op. cit.*, pp. 648–50, 655, 659–60 (addressing criticisms of the Tribunal's political nature, and noting that the Tribunal avoided decisions in certain politically sensitive areas, such as exchange control regulations and the wrongful expulsion of aliens). *But see* Daniel Barstow Magraw, "The Tribunal in Jurisprudential Perspective," in Lillich & Magraw, *The Iran-United States Claims Tribunal: Its Contributions to the Law of State Responsibility*, *op. cit.*, pp. 1, 33 ("One might . . . reasonably conclude that there is not significantly more compromise present (in the Iran-United

- The Tribunal's slow pace has meant that many Claimants – especially Iran-U.S. dual nationals – often have had to wait years, or even decades, for compensation.[151]

Despite these criticisms, the Tribunal proved that an international arbitral tribunal – through sensitivity, professionalism, and perseverance – can play a key role in helping states resolve an international crisis of the first order and in the process give substantial justice to the parties before it.[152] Even if the Tribunal had not profoundly shaped the development of international law and arbitration, it could be considered a great success on this basis alone.

States Claims Tribunal) than in other international dispute settlement tribunals *as a general matter*.").

[151] *See, e.g., Frederica Lincoln Riahi v. Government of the Islamic Republic of Iran*, Final Award No. 600-485-1 (Feb. 27, 2003), 37 *Iran-U.S. Cl. Trib. Rep.*, p. 11 (decided 22 years after the case had been filed).

[152] In this regard, the Algiers Declarations recall the 1871 Treaty of Washington, by which the United States and Great Britain averted war, and greatly improved their relations, after agreeing to arbitrate disputes arising out of British support for the Confederacy during the American Civil War. An American participant in the *Alabama Claims* proceedings favorably quoted William Gladstone's observation that "'(t)he Treaty of Washington and the Geneva Arbitration stand out as the most notable victory in the nineteenth century of the noble art of preventive diplomacy, and the most signal exhibition in their history of self-command in two of the three democratic Powers of the Western World.'" Frank Warren Hackett, *Reminiscences of the Geneva Tribunal* (Boston & New York: Riverside Press, 1911), p. 376, quoting John Morley, *Life of William Ewart Gladstone*, vol. 3 (London/New York: Macmillan, 1903), p. 413.

Chapter Eighteen: A New Path. Minori laid back in her bed in the infirmary. Her bed's curtain was drawn open to reveal a short elderly woman, her grey hair slicked back and styled into a bun. "Alright, sweetheart, let's get started," Recovery Girl said, puckering her lips, ready to activate her Quirk. Minori was a girl of little words that let off a detached and passive demeanor. However, she couldn't deny the slightest smile on her face as she tried to suppress her giggling in front of the reputable healer. In Chapter Eighteen , Whiskey Jack retrieves Shadow from the afterlife so Easter and Horus can bring his body back from the dead. Laura kills Mr. Town and Mr. World before Shadow arrives in Rock City to stop the war. He reveals to the gods it was all a con between Mr. Wednesday and Mr. World before freeing Laura from the gold coin's entrapment. At Rock City , Czernobog , Anansi , Kali , and many others continue to gather for their war. Chapter Eighteen. 18. I throw myself into training with a vengeance. Eat, live, and breathe the workouts, drills, weapons practice, lectures on tactics. A handful of us are moved into an additional class that gives me hope I may be a contender for the actual war. The soldiers simply call it the Block, but the tattoo on my arm lists it as S.S.C., short for Simulated Street Combat. Deep in 13, they've built an artificial Capitol city block. Chapter 18. http://mp387.s3.amazonaws.com/faith18.mp3. The twelve disciples. And when He had called unto Him His twelve disciples, He gave them power against unclean spirits, to cast them out, and to heal all manner of sickness and all manner of disease. â€“ Matt. 10:1. The twelve disciples represent the twelve qualities of mind which can be controlled and disciplined by man. Chapter Eighteen. Conclusion â€“ The Perfection of Renunciation. TEXT 1: Arjuna said: O mighty-armed one, I wish to understand the purpose of renunciation [tyÄga] and of the renounced order of life [sannyÄsa], O killer of the KeÅ›Ä« demon, master of the senses. TEXT 2: The Supreme Personality of Godhead said: The giving up of activities that are based on material desire is what great learned men call the renounced order of life [sannyÄsa]. And giving up the results of all activities is what the wise call renunciation [tyÄga].