

**UNIVERSITY OF OXFORD FACULTY OF LAW**  
**INTERNATIONAL DISPUTE SETTLEMENT 2003-2004**  
**MIXED INTERNATIONAL ARBITRATION**

**1. THE IRAN-US CLAIMS TRIBUNAL**

Further Reading:

**\*\*WEB SITE** <http://www.iusct.org/index-english.html>

American Society of International Law, *ASIL Proceedings*, 1982, pp.1-13, 1983, pp. 3-31, 1984, pp. 221-240

\* **Aldrich**, *The Jurisprudence of the Iran-United States Claims Tribunal* (1996)

Amin, "Iran-US Claims Settlement", 32 *ICLQ* 750 (1983)

\* **Avanessian**, *Iran-United States Claims Tribunal in Action*, (1993)

Belland, "The Iran-US Claims Tribunal: Some reflections on Trying a Claim", [1984] *J. Int. Arb.* 223

Caron, "The nature of the Iran-US Claims Tribunal..." 84 *AJIL* 104 (1990)

Lillich (ed.), *The Iran-US Claims Tribunal 1981-83*, (1984)

Stein, "Jurisprudence and Jurist's Prudence: The Iranian Forum Clause Decisions of the Iran-US Claims Tribunal", 78 *AJIL* 1 (1984)

\* **Toope**, *Mixed International Arbitration* (1990), chs VIII, IX

1. **Factual background:** 3 November 1979, seizure of US embassy in Tehran, breach of contracts, expropriation of US assets in Iran. Followed by US freeze on \$12bn. Iranian assets -19 ILM 514 (1979), under International Emergency Economic Powers Act 1977, 50 USC § 1701, 17 ILM 140 (1978). Many Iranian assets in US attached in judicial proceedings: see Note, "Prejudgment Attachment of Frozen Iranian Assets", 69 *Calif L Rev.* 837 (1981). Abortive US rescue attempt, 24 April 1980. *US Diplomatic & Consular Staff in Tehran* case, (1980) ICJ Rep. 1.

2. The Iran-US Claims Tribunal was established under the **\*\*1981 Algiers Accords** brokered by Algeria: 20 ILM 223 (1981). The Accords include the **\*\*General Declaration** [hereafter, **GD**], 20 ILM 224 (1981), <http://www.iusct.org/general-declaration.pdf> and the **\*\*Claims Settlement Agreement** [hereafter, **CSD**], 20 ILM 230 (1981), <http://www.iusct.org/claims-settlement.pdf>. [Also reproduced in *Iran-US Claims Tribunal Reports*, (hereafter, **Iran-US CTR**, vol. 1, p. 3ff]. The settlement was challenged in the US: *Dames and Moore v. US* 453 US 654 (1981); 75 *AJIL* 954 (1981); Chinkin, "The Foreign Affairs Power of the US President and the Iranian Hostages Agreement...", 32 *ICLQ* 600 (1983). Documents published at <http://www.iusct.org/index-english.html>

3. Under the **General Declaration**, the US undertook to restore the financial position to that on 14 Nov. 1979; both States undertook to terminate litigation between nationals and other Govt.; US hostages were to be returned, and Iranian assets released; a Security Account was to be established for the satisfaction of debts owing to the US and its citizens; the US agreed to revoke trade sanctions, and withdraw the ICJ case, and to bar future claims arising from the episode. The US pledge non-intervention in Iran. The I-USCT was to interpret the GD.

4. Discontinuance of **ICJ proceedings**: letter of 6 April 1981, 20 ILM 889 (1981); G. Weger, "Discontinuance of International Proceedings: The Hostages Case", 76 AJIL 717 (1982)
5. The Claims Settlement Declaration provided for the establishment of the **Iran-US Claims Tribunal**, and for its composition, structure and procedure (modified UNCITRAL rules: see <http://www.iusct.org/tribunal-rules.pdf>, 2 Iran-US CTR 405.
6. The Tribunal is not the primary means of settlement -art. I. It has **jurisdiction** over: (a) claims by nationals against the other government, excluding the "Embassy" and "revolutionary" claims and 'Iranian Forum cases' (see below); (b) inter-State claims; (c) the interpretation of the GD. On the status of I-USCT, see Lloyd-Jones, "The Iran-US Claims Tribunal...", 24 Va. J. Int'l L. 259 (1984)

## JURISDICTION

7. Definition of "**nationals**" -CSD art. VII; *Case A/2*, 1 Iran-US CTR 101.
8. **Dual nationals** treated according to 'effective nationality' principle: *Esphahanian v. Bank Tejarat*, 2 Iran-US CTR 157; *Golpira v. Iran* 2 Iran-US CTR 171 (and note Shafeiei's dissent); \**Case A/18*, 5 Iran-US CTR 251 (note Iranian response, at 266, 428); *Saghi v. Iran* 14 Iran-US CTR 3. Is this approach peculiar to the Iran-US Claims Tribunal?
9. The terms of the Tribunal's jurisdiction over **juridical persons** are laid down in CSD art. VII(1)(a). For applications, see:- *Flexivan Leasing Inc. v. Iran* 1 Iran-US CTR 455; *General Motors Corp. v. Iran* 3 Iran-US CTR 1; *Management of Alcan & Ors. v. Ircable Corp.* 2Iran-US CTR 294; *Pomeroy v. Iran* 2 Iran-US CTR 372; *International School Services v. NICIC* 5 Iran-US CTR 338; *Gruen Associates v. Iran Housing Co* 3 Iran-US CTR 97.
10. The CSD also set out the range of **respondents** within the Tribunal's jurisdiction: see CSD art. VII(3). See:- *Economy Forms Corp. v. Iran* 3 Iran-US CTR 42; *Rexnord Inc. v. Iran* 2 Iran-US CTR 6; *Raygo Wagner Equipment Co. v. Star Line Iran Co.* 1 Iran-US CTR 411.
11. The Tribunal's **subject matter jurisdiction** (jurisdiction *ratione materiae*) extended to claims that were outstanding (whether or not they had been filed with a court) at the date of the Claims Settlement Declaration, and that "arise out of debts, contracts (including letters of credit or bank guarantees), expropriations or other measures affecting property rights".
12. On "**outstanding claims**" see, e.g., *Kimberley-Clark Corp. v. Bank Markasi* 2 Iran-US CTR 334. *Bendore-Derozzi v. Iran* 6 Iran-US CTR 130. *Isaiah v. Bank Mellat* 2 Iran-US CTR 130.
13. On "**expropriation**" see *Starrett Housing Corp. v. Iran* 23 ILM 1091 (1984).
14. On "**other measures**" see, e.g., *Hoffland Honey Co. v. NIOC* 2 Iran-US CTR 41; *Grimm v. Iran* 2 Iran-US CTR 78; *Haddadi v. US* 8 Iran-US CTR 20.
15. Certain claims are **excluded**: see *Haji-Bagherpur v. US* 2 Iran-US CTR 28; *Ultrasystems Inc. v. Iran* 2 Iran-US CTR 100.

16. Disputes covered by clauses giving exclusive jurisdiction to **Iranian courts** are excluded. See: CSD art. II(1); *Carvalho v. Hull Blyth (Angola) Ltd.*, [1979] 3 All ER 280; [ The relevant Iran-US cases include: *Halliburton v. Doreen/IMCO* 1 Iran-US CTR 242 (note dissents, at 284, 305); *HNTB v. Iran* 1 Iran-US CTR 248; *Drucker v. Foreign Transaction Co.* 1 Iran-US CTR 252; *TCSB Inc. v. Iran* 1 Iran-US CTR 262; *Ford Aerospace v. Iran* 1 Iran-US CTR 268; *Zokor International v. Iran* 1 Iran-US CTR 271; *ITEL v. Iran* 7 Iran-US CTR 31; *Aeronutronics Overseas Services Inc. v. Iran* 5 Iran-US CTR 187; *International Technical Products Corp. v. Iran* 9 Iran-US CTR 206 ].

17. On **official claims**. See CSD art. II(2): *Iranian Customs v US, Case B/3* 8 Iran-US CTR 89.

18. For examples of **interpretative cases** see GD paras. 16, 17; CSD art. II(3), art. VI(4); *Case A/1, Security Account*, 1 Iran-US CTR 189, 22 ILM 591 (1983); *Case A/15, Excess Iranian Funds*, 26 ILM 1562 (1987); *Case A/16, Standby Letters of Credit*, 5 Iran-US CTR 57.

19. **Enforcement** of Iran-US CTR awards via the Security Fund mechanism: see *Sperry Corp. v. United States*, 853 F.2d 904 (1988); 83 AJIL 86 (1989); *Dallal v. Bank Mellat*, [1986] 1 All ER 240.

20. Approximately 3,100 **small claims** settled by \$105m lump sum settlement (1990: 25 *Iran-US CTR* 327), administered in US by Foreign Claims Settlement Commission. See Lillich and Bederman, 91 *AJIL* 436-465 (1997).

Almost all of the approximately 4,700 private U.S. claims filed against the Government of Iran at the Tribunal have been resolved and have resulted in more than \$2.5 billion in awards to U.S. nationals and companies.

## UNITED NATIONS COMPENSATION COMMISSION

Reading:-

<<http://www.unog.ch/uncc/start.htm> > [with bibliography under 'Selected Publications']

**\*\* UN Doc. S/24589, 28 September 1992: enclosing Report dated 1 September 1992 on the activities of the United Nations Compensation Commission, 31 ILM 1009 (1992)**

**\*\* Volume 109 of the *ILR* contains a valuable collection of UNCC materials.**

Lillich, R.B., (ed.) *The United Nations Compensation Commission [Thirteenth Sokol Colloquium]* (1995)

For bibliography of additional materials, see <http://www.unog.ch/uncc/publicat.htm>

1. Following the invasion of Kuwait by Iraq, 2 August 1990, the UN Security Council, determined, by SC Res. 687 (1991), that:

“Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations as a result of Iraq’s unlawful invasion and occupation of Kuwait.”

2. Following establishment of a cease-fire, the Security Council established the UNCC to deal with claims for damages arising from the invasion and occupation of Kuwait UN SC Res 692 establishing UNCC: see M. Weller, *Iraq and Kuwait: the hostilities and their aftermath* (1993)13, and 537-563. Awards are to be paid out of the Fund established from 30% levy on Iraqi post-sanctions oil exports.

3. Note the **Provisional Rules for Claims Procedure**

arts. 4-5            Claims submitted by States, international organizations; or persons or corporations if their national States fail to submit.

art. 14            Preliminary assessment by Secretariat.

art. 16            Reports by Executive Secretary; 30-day right to respond.

arts. 18-27        Commissioners

art. 28            Panels

art. 31            Applicable law

art. 40            Decisions -recommendations by the panels to the Governing Council

4. For decisions see < <http://www.unog.ch/uncc/reports.htm> >; 109 *ILR*; and Alford, “Well Blowout Control Claim”, 92 *AJIL* 287-291 (1998).

***Questions for consideration:-***

1.        How far may the procedures instituted in the Iran-US Claims Tribunal concerning (a) the *locus standi* of individual applicants and (b) the enforcement of awards be applied in other international fora?
2.        Do the procedures of the UNCC satisfy elementary requirements of the Rule of law?
3.        Why are the Iran-US Claims Tribunal and the UNCC so dissimilar?