THE IRAN UNITED STATES CLAIMS TRIBUNAL: ITS CONTRIBUTION TO THE PROCESS OF INTERNATIONAL CLAIMS RESOLUTION

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Established pursuant to the Algiers Accords in 1981, the Iran-United States Claims Tribunal has spent the last twenty-two years engaged in the daunting task of resolving thousands of disputes involving two governments whose relationship has been continually fraught with tension. During the years of the Tribunal’s operations, this tension has been manifested through the U.S. government’s repeated imposition of sanctions, the “Tanker War” between U.S. and Iranian forces in the Persian Gulf, and the shooting down of an Iran Air Airbus by the USS Vincennes. Although the Tribunal has continued to function despite these obstacles, political considerations have played a critical role in the process of claims resolution.

The Tribunal has focused primarily on the extensive claims of U.S. companies and individuals stemming from the Iranian Revolution, while avoiding the more complex government-to-government claims until quite recently. The Tribunal is significant not only for the wealth of jurisprudence it has issued, which has been the subject of numerous other tomes, but also for the institutional and procedural lessons that can be drawn from its performance. David Caron, of the University of California at Berkeley, and John Crook, former assistant legal adviser with the U.S. Department of State, have comprehensively addressed the latter subject through an impressive compendium of essays by former colleagues and other contacts cultivated during the editors’ respective tenures at the Tribunal. The authors include numerous arbitrators, Tribunal officials, and practitioners, whose firsthand experience provides invaluable, albeit sometimes conflicting, insider viewpoints on the Tribunal’s operations.

An obvious weakness of the compilation, acknowledged by the editors themselves, is their failure to convince their Iranian colleagues and counterparts to participate in this project. Despite their concerted efforts to solicit contributions reflecting the Iranian government’s perspective, only Parvis Ansari Moin, who served previously as one of Iran’s party-appointed arbitrators, accepted their invitation. This omission is partially remedied by the inclusion of certain official documents authored by the Iranian-appointed arbitrators and the Iranian Agent.

The book is divided into three parts, which address successive stages of the Tribunal’s development. Part I deals with the mechanics of the Tribunal’s establishment. It includes essays delineating the parameters of the U.S. Agent’s functions, the cooperative arrangements developed with the government of the Netherlands, the process for selection of arbitrators, and the creative adaptation of the UNCITRAL Rules to accommodate the broad spectrum of public and private claims to be presented. The last chapter in this section, by Ambassador Christopher Pinto, who has served in the Tribunal’s secretary-general since its inception, provides an exhaustive account of the organizational, logistical, linguistic, financial, and administrative details that must be addressed in order to create a new international institution.

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1 The Tribunal has jurisdiction to address private claims of U.S. nationals against Iran and private claims of Iranian nationals against the United States, which arise out of debts, contracts, expropriations or other measures affecting property rights. See 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, Art. II(1), reprinted in 1 Iran-U.S. Cl. Trib. Rep. 9 (1983) [hereinafter Claims Settlement Declaration]. The Tribunal is also empowered to handle official claims between the two governments regarding the purchase and sale of goods and services, as well as disputes regarding the interpretation or performance of certain provisions of the Algiers Accords. Id., Art. II(2), (5).


4 Article III(i) of the Claims Settlement Declaration, supra note 1, specifies that the Tribunal shall consist of nine members, and authorizes Iran and the United States to appoint three members each. The remaining three members are to be appointed by mutual agreement of the other six or, in default of such agreement, by the Appointing Authority. Id.; see also UNCITRAL Model Law on International Commercial Arbitration, June 21, 1985, Art. 11, UN Doc. A/40/17, Annex 1 (1985), available at <http://www.unctitral.org/english/texts/arbitration/mlarb.htm>. Article VI(2) of the Claims Settlement Declaration also requires each government to designate an agent to represent it before the Tribunal.
Part II contains a variety of process-oriented essays based on the claims handled by the Tribunal during its most productive period which, according to the editors, lasted from around mid-1982 until late 1991. Particularly noteworthy are three essays by Charles Brower, Nils Mangard, and Parviz Ansari Moin, all former members of the Tribunal, on the interpersonal dynamics of the decision-making process, which reflect sometimes divergent opinions about the factors that generated controversy and fostered compromise among U.S.-appointed arbitrators, third-country arbitrators, and Iranian-appointed arbitrators. Of particular interest is Moin’s admission that the Iranian arbitrators actively sought to foster an appreciation among the third-country arbitrators of the Iranian government’s comparative lack of experience in international arbitration vis-à-vis the U.S. claimants and urged them to “give the benefit of the doubt to the weaker side” (p. 264). This concept of their mission may partly explain the fact that no Iranian arbitrator has ever voted to award damages to a U.S. claimant or the U.S. government. Other essays address more “nuts-and-bolts” issues such as the use of experts, settlements, enforcement of awards, and translation.

Part III analyzes the reasons for the Tribunal’s diminished productivity during the 1990s when it finally began to focus on the most politically controversial cases on its docket, namely the claims of U.S.-Iranian dual nationals and the government-to-government claims. Although most of the dual national claims have now been completed, many of the government-to-government claims are still pending. The substance of these claims, which include both contractual and treaty interpretation issues, is the subject of a comprehensive essay by Ronald Bettauer, deputy legal adviser with the U.S. Department of State.

The book is most significant for its frank assessment of the Tribunal’s institutional and procedural strengths and weaknesses, which is intended to provide guidance for future claims resolution fora. As Howard Holtzmann persuasively argues, the Tribunal is a testament to the effectiveness and flexibility of the UNCITRAL Rules. George Aldrich aptly demonstrates the importance of the Appointing Authority, an outside party available to appoint presiding members of the Tribunal and replacement arbitrators in cases where the party-appointed arbitrators are unable to agree. This institution has ensured the continuity of proceedings in a heated political context in which the United States and Iran has frequently failed to reach agreement on the appointment of arbitrators. Robert Briner’s detailed account of the grounds for challenges that have been filed against particular arbitrators and the subsequent decisions of the Appointing Authority lends insight into appropriate grounds for challenges against members of other arbitral tribunals; applicable precedent on this subject historically has been sparse.

In other respects, the Tribunal’s practices are problematic and should be avoided by subsequently established claims resolution tribunals. Richard Mosk describes numerous factors that have interfered with “The Pace of the Proceedings,” including some that are inherent to international dispute resolution and others—such as the lack of full-time availability of third-country arbitrators, liberal grants of extensions to both governments, and the lack of a well-functioning case management system—that could be corrected through the creative recommendations he proposes. Lucy Reed’s eloquent essay on the closing phase of the Tribunal’s proceedings offers additional recommendations to ensure that future claims resolution fora manage their dockets more effectively.

Sean Murphy’s critique of the processes for securing payment of Tribunal awards highlights the problems inherent in the current arrangements, including the lack of any mechanism to enforce Iran’s obligation to maintain the requisite minimum balance in the Security Account and the prospect that payments of Tribunal awards may be subject to challenge in national courts. After acknowledging that the establishment of a well-funded security account was only feasible because of the existence of several billion dollars of blocked Iranian assets in the United States and in U.S. banks abroad, he offers several alternatives, which may be better suited for other contexts.

6 Reed notes with approval that the U.N. Compensation Commission, established to resolve Gulf War–related claims against Iraq, has learned from the mistakes of the Tribunal. In particular, the commission recognizes the importance of prioritizing small claims of private individuals, who are least able to absorb their own losses, and the utility of imposing strict time limits for deciding claims.

7 The Algiers Accord established an interest-bearing security account initially containing $1 billion to secure the payment of, and to pay, claims against Iraq in accordance with the Claims Settlement Declaration. See Declaration of the Government of the Democratic and Popular Republic of Algeria, Jan. 19, 1981, para. 7, reprinted in 1 Iran-U.S. Cl. Trib. Rep. 3, 5–6 (1983). The Iranian government was required to ensure that the minimum balance in the account did not fall below $500 million. Id.

5 By contrast, the U.S.-appointed arbitrators have repeatedly voted to award damages to the Iranian government.
While the editors acknowledge that the opposition of the Iranian government and the Iranian-appointed arbitrators to the Tribunal’s work has taken its toll on the institution, only a few of the essays offer any insight into the ways in which this tension has manifested itself. A notable exception is Brower’s essay, in which he posits that “a truly bargained institution such as the Tribunal is most likely to be a political cauldron” (p. 249). He then elaborates on the various pressures that have prompted third-country arbitrators to make certain concessions to the Iranians. A number of the essays also suggest that the Iranian government’s initial resistance to resolving claims of dual nationals stemmed from their perception that many of those claimants belonged to families that had supported the Shah’s regime.

The Iranian government has demonstrated its displeasure with the Tribunal’s work through recourse to certain unconventional tactics, many of which appear to have been intended to thwart the Tribunal’s progress. These tactics included prompting the sudden disappearance of one of its arbitrators during deliberations on a precedent-setting case in an apparent effort to prevent the issuance of the decision, challenging third-country arbitrators who failed to rule in its favor, and withholding approval of a proposed successor to a retiring arbitrator. The editors also devote considerable attention to the 1984 assault on Nils Mangard by two of the Iranian-appointed arbitrators. The emotionally charged text of a letter sent by the Iranian arbitrators to the president of the Tribunal following the incident, which is reprinted in full, unequivocally reveals their perception that the Tribunal’s decisions reflect a pro-American bias.

Some of the Iranian government’s unconventional tactics may reflect different cultural assumptions regarding the appropriate level of contact between parties and arbitrators. For example, John Crook’s essay on “The Tribunal at Mid-Life” contrasts the Iranian respondents’ frequent ex parte contacts with Iranian and certain third-country arbitrators (confirmed by Mangard, who recounts having been “personally approached several times with requests to vote in Iran’s favor” (p. 260)) with the U.S. government’s opinion that this practice undermines objective decision-making. Moreover, several of the essays refer to the Iranian arbitrators’ habit of leaking award terms to the Iranian government prior to the issuance of the Tribunal’s decisions. Given the pervasive

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8 The suggestion of leakages by the Iranian arbitrators is also implicit in the concurring opinion of George

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H. Aldrich to ITT Industries v. Iran, 2 Iran-U.S. Cl. Trib. Rep. 348, 349 (1983) (stating that “the settlement may well have been inspired, at least in part, by the Respondent’s desire to prevent” certain views of his “from appearing in the Award”).

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