Dalhousie Law Journal

Volume 13 | Issue 2 Article 1

10-1-1990

Iran-United States Claims Tribunal

Gunnar Lagergren
Court of Appeals for Western Sweden

Articles

Gunnar Lagergren*

Iran — United States Claims Tribunal**

I. *Introduction*

On 1 July 1981, at the Peace Palace in The Hague, I had the privilege of declaring open the Iran-United States Claims Tribunal, which had been constituted in accordance with the Declarations made by the Government of the Democratic and Popular Republic of Algeria, on 19 January 1981, and adhered to by Iran and the United States of America. As I observed at that time, two great nations had, by agreeing to peaceful settlement of their differences through arbitration, brought to an end a crisis of unique complexity which might well have become a threat to world peace.

I had experienced a similar situation when India and Pakistan on 30 June 1965 agreed on an immediate cease-fire in termination of hostilities in the Rann of Kutch area and soon afterwards decided to have recourse to arbitration.

It would be helpful, by way of background, to recall a few of the events which preceded the Declarations of Algiers. We all know of the massive U.S. infiltration of Iran during the last years of the Shah's reign. Political and economic leaders in the U.S. and the Shah found a common interest in transforming — too quickly — Iran into a modern industrialized state and in building a sophisticated defence system capable of watching the Soviet Union. All this and the growing despotism in Iran, supported by the odious secret police, SAVAK, led to wide spread indignation in many circles. In the autumn of 1978, disturbances, strikes and anti-American incidents became more and more frequent in Iran. On 16 January 1979, the Shah left Iran never to return. The Islamic Revolution which forced him to relinquish his power claimed complete victory on 11 February 1979.

---

*Gunnar Lagergren, Former President of the Tribunal and Former President of the Court of Appeals for Western Sweden.

**This paper is an anticipated further development of my previous article on the Iran-United States Claims Tribunal, published in *Realism in Law-Making, essays on international law in honour of Willem Riphagen,* T.M.C. Asser Institute, The Hague, 1986. The Institute has kindly granted permission to use parts of the earlier article. Several footnotes to these parts have, however, now been omitted.

At the end of October 1979 the deposed Shah arrived in the United States for medical treatment in a New York hospital. Seeing the Shah's reception by the United States as an act of provocation, militant students seized the US Embassy in Tehran on 4 November 1979, taking a large number of diplomats and other US citizens as hostages. In exchange for the release of the hostages, the students demanded that the Shah be returned to Iran. On 14 November 1979, President Carter in retaliation froze Iranian assets in the United States banks, at home and overseas, valued at some 12 billion dollars.

Two United Nations Security Council resolutions later called on Iran to release the hostages.

Ruling on an application made by the United States, the International Court of Justice, initially by an order of 15 December 1979 and later through its final judgment of 24 May 1980, found that Iran had violated its obligation to the United States under international law to protect US diplomatic and consular personnel. The Court called for the immediate termination of the detention of Embassy personnel and for reparation to be made to the United States for injury caused to it by these events. Iran took no part in the proceedings. Despite intense diplomatic activity and one abortive military episode (24-25 April 1980), aimed at bringing about the release of the hostages, it took the death of the Shah (Cairo, 27 July 1980), the outbreak of the Iran-Iraq war in September 1980 and the mediation of a friendly power, to end the captivity of the 52 hostages, 444 days after it began.

Negotiations to end the crisis were conducted through intermediaries. No Iranian official would, for political reasons, meet with any American official. The process was an extremely complex one and has been described as unique in legal history. In the event, when the first plane carrying the hostages left Tehran, President Reagan had been in office for about 45 minutes and Mr. Carter was not able to welcome the 52 hostages at Wiesbaden as President of the United States.

II. *The Algiers Declarations*

The principal terms of the final settlement were contained in two Declarations of 19 January 1981 made by the Government of Algeria. One of the Declarations set forth certain general principles and the basic commitments each party was willing to make in order to resolve the crisis, and is often given the short title "General Declaration"; the other, concerning the settlement of claims, is often called the "Claims Settlement Declaration".

The General Declaration records the central commitments of the Parties: in exchange for Iran's undertaking to release the hostages, the

United States would ensure the free transfer of all Iranian assets held in the US banking system for the payment of specified Iranian debts and the return of the remainder to Iran. Restoration of the financial status of Iran was, however, no longer a mere matter of revoking the order freezing its assets. Following the Revolution, some 450 claims had been filed in United States courts against Iran and a substantial portion of Iran's frozen assets had been attached in these judicial proceedings. These judicial attachments had to be nullified. Iran and the United States also agreed that the court proceedings should be brought to an end, and that alternative means for adjudication of pending claims by United States nationals against Iran and its state enterprises should be provided for. Accordingly, the General Delcaration provides that the United States

> "agrees to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its State enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration."

The Claims Settlement Declaration establishes the Iran-United States Claims Tribunal as the mechanism for bringing about "binding third-party arbitration", and declares that

> "Claims referred to the Arbitral Tribunal shall ... be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court."[1]

With a view to implementing these provisions the President of the United States required federal courts to suspend prosecution of all claims over which the Tribunal had jurisdiction. Many American companies complained bitterly, claiming that revocation of the order freezing Iran's assets amounted to payment of a ransom at their expense. Following challenges of the President's action by claimants in several courts, the United States Supreme Court in *Dames & Moore* v. *Regan* concluded — the day after the inauguration of the Tribunal — that the President of the United States did have the authority to dissolve pre-judgment attachments as well as to suspend claims pending in United States courts. The Justices of the Supreme Court emphasized the narrowness of their decision. They also stated:

> "Where the settlement of claims has been determined to be a necessary incident to the resolution of a major foreign policy dispute ... we are not prepared to say that the President lacks the power to settle such claims."

---

1. Article VII, paragraph 2.

However, the Supreme Court also added the following sentence: "being overly sanguine about the chances of United States claimants before the Claims Tribunal would require a degree of naïvety which should not be demanded even of judges."

The financial arrangements for implementing the Algiers Declarations were contained in several inter-related agreements among the central banks of Iran, the United States, Algeria, the United Kingdom and the Netherlands. The arrangements are very complex, and it is not my intention to go into them in detail here. Suffice it to say that the banks became the preferred creditors and at the outset only about 2.88 billion dollars were transferred to Iran. However, it is important to note that 1 billion dollars were to be placed in a special Security Account, held in escrow by the Central Bank of Algeria, and intended for the payment of awards made by the Iran-United States Claims Tribunal to United States claimants. Iran agreed to replenish this Account when necessary in order to maintain a minimum balance of 500 million dollars. This obligation has been faithfully fulfilled. I believe it would be correct to view the Security Account as having been established as a countervailing measure following nullification of attachments in the United States.

III. *Structure and Procedure of the Tribunal*

The Iran-United States Claims Tribunal consists of nine members — three appointed by Iran, three by the United States, and three selected "by mutual agreement" by the six party-appointed members. One of the third-country members is to be appointed president of the Tribunal. By agreement of the two Governments, the seat of the Tribunal was established at The Hague.

The history of international arbitration shows that serious difficulties may arise in connection with the appointment or replacement of neutral members of a tribunal. Accordingly, the applicable UNCITRAL-Rules, as modified by the Tribunal (i.e. "the Tribunal Rules") provide that if the normal appointment mechanism does not function, either Government may request the Secretary-General of the Permanent Court of Arbitration to designate an "appointing authority". He has done so, the then President of the Supreme Court of Netherlands, Judge Charles Moons, being so designated. Judge Moons has twice been required to make appointments of third-country members, and has, on one occasion, been called upon to select the president from among the three third-country members.

Another function of the appointing authority is to decide challenges of members made pursuant to Articles 9-12 of the Tribunal Rules. Thus far Judge Moons has had, in two instances, to interpret and apply those provisions.

When first constituted, the Tribunal comprised the following: as third-country members, Pierre Bellet, former Chief Justice of France, Nils Mangard, former Judge of the Sbea Court of Appeals and President of the Swedish National Board for Consumer Complaints, and myself, former President of the Court of Appeals for Western Sweden; as Iranian members, Mahmoud Kashani, Shafie Shafeiei and Seyed H. Enayat; and as United States members, Howard M. Holtzmann, George H. Aldrich and Richard M. Mosk.

After the inaugural session, the nine members had to deal with some formidable problems: they had no common language, and no staff, and yet, under the Algiers Declarations were required to begin receiving claims by 20 October 1981, or within some ten weeks. A bilingual Secretariat, including a claims Registry, had to be set up, and the prospective parties had to be informed of the formalities that would be required of them when filing claims and responding to them. It was decided that each claim should be presented in both English and Persian, 12 (now 20) copies of each document being required in each language. The rules for filing written pleadings were formulated in considerable detail, even the size of the paper being prescribed — a point of practical importance, when one realizes that there were thousands of documents to be dealt with.

At the kind invitation of the Bureau of the Permanent Court of Arbitration, the Tribunal began work, including the receipt of claims, at the Court's premises in the Peace Palace. In order to protect the serene Palace from sudden invasion by parties, counsel and freight agents bearing boxes of documents, the Tribunal declared that the date of filing would confer no priority on a claim.

During the 3-month filing period the Registry received, filed and later served on the respondents some 4,000 claims, composed of some 3,000 claims of less than 250,000 dollars and about 1,000 larger claims. An early decision by the Tribunal in case No. A/2 held, that while it was competent to decide claims of nationals of the United States against Iran and of Iranian nationals against the United States, it did not have jurisdiction over claims by Iran against United States nationals. This decision resulted in the immediate withdrawal by Iran of 1,330 claims, which were thus never served on the respondents.

In due course, the Tribunal moved from the Peace Palace to its own building, which was appropriately equipped and well secured against the use of force to disrupt proceedings. When I left the Tribunal on 30 September 1984, having served as its president for over three years, it had a staff of over 80 persons, comprising legal assistants, Registry officers, language specialists and administrative personnel, drawn from 17 nationalities and headed by a Secretary-General, Ambassador

Christopher Pinto of Sri Lanka. The expenses of the Tribunal, at that time approximately 4 million dollars (now somewhat over 5 million) annually, are borne equally by the two Governments.

While the claims were being received by the Registry, the nine members were occupied with preparing the Tribunal Rules. These deliberations were necessarily time-consuming and complex. One by-product of the process was that persons of diverse cultural, linguistic and legal background learned to work together as a unit in the performance of the Tribunal's delicate task.

In accordance with the Claims Settlement Declaration, the members decided to sit either as the "Full Tribunal" or in chambers, each chamber comprising one member appointed by each Government and one third-country member, who would act as chairman. Disputes between the two Governments relating to the interpretation or application of the Algiers Declarations were to be brought before the Full Tribunal, which would also deal with important issues of principles referred to it by a chamber. A chamber would also relinquish jurisdiction to the Full Tribunal if a majority decision could not be reached or if the resolution of an issue might result in inconsistent decisions.

The Tribunal Rules provide for four stages of written pleadings: Statement of Claim, Statement of Defence, Reply and Rejoinder. In many cases the Tribunal invites the parties to a pre-hearing conference for the purpose of defining the issues and preparing the hearing. Finally, if the case cannot be decided on the documents before the Tribunal, a hearing will be held. As Judge Holtzmann once observed,[2] a striking aspect of the Tribunal's procedure is the very short hearings that are held even in complex cases. Cases which would consume months of hearings in other arbitral forums or in most national courts, are heard by the Tribunal in a few days. Short hearings have been made possible by long papers. The Tribunal encourages extensive exchanges of written arguments and evidence before a hearing, and documents are the principal source of evidence. It is noteworthy that the Tribunal does not normally admit time-consuming objections to questions put to witnesses. It tries to assess the weight of a statement by a witness, bearing in mind the question put to him. On the basis, *inter alia,* of Scandinavian concepts, the Tribunal makes a distinction between persons with an interest in a claim (for instance individual claimants and senior officials of corporate claimants) and those who are independent. The former do not take the oath, are permitted to be present throughout the proceedings, and may be questioned at any time. The true witnesses remain outside the hearing room except when testifying.

---

2. *Some Lessons of the Iran-United States Claims Tribunal,* § 16.05, 1988.

As to the proceedings, a natural compromise was reached: hearings are held *in camera,* but awards and other decisions are, as a rule, made available to the public. They are reproduced, *inter alia,* in the Iran-United States Claims Tribunal Reports (Iran-U.S.C.T.R.), published by Grotius Publications, Cambridge, England.

Following common law and Scandinavian practice, the Tribunal Rules provide that any arbitrator may request that his dissenting or concurring opinion, be recorded.

One memorable discussion concerned a request by the Iranian members that the Tribunal's awards should be preceded by the words "In the name of God". In opposing the request, other members pointed out that the award could often comprise a majority as well as a minority opinion. By way of compromise it was agreed that while awards should not be preceded by that phrase, the Iranian members would be free to include it above their signatures.

IV. *Decisions of the Tribunal*

Since the Tribunal adopted its rules of procedure, established its administrative infrastructure and began the adjudication of claims, it has handed down awards and other decisions dealing with a wide range of issues, and it would be impossible to attempt any comprehensive description of them in the present study. I would like, however, to mention a few significant decisions.

Under the Tribunal Rules the Tribunal is empowered to "decide *ex aequo et bono* only if the arbitrating parties have expressly and in writing authorized it to do so." Thus far no case has been so decided. However, it should be noted that in its decisions the Tribunal has often referred — with regard to procedural matters to its "inherent power", and with regard to substantive matters to "equity", "fairness" and "justice".

The Claims Settlement Declaration gives the Tribunal jurisdiction over claims "arising out of debts, contracts ... expropriations or other measures affecting property rights." It is also empowered to hear certain official claims of one Government against the other "arising out of contractual arrangements between them for the purchase and sale of goods and services"; and to decide certain bank claims. All awards of the Tribunal are final and binding. A claim of less than 250,000 dollars is in principle presented by the claimant's Government (as counsel) while claims of 250,000 dollars or more are to be presented by the claimants themselves.[3]

The provision of different modes for the presentation of claims has given rise to arguments as to the extent to which the two Governments

3. *Nasser Esphahanian* v. *Bank Tejerat,* 2 Iran-U.S.C.T.R. 165.

are exercising diplomatic protection in the proceedings before the Tribunal. In the decision of 6 April 1984, in case A/18, the Tribunal held that

> "it is the rights of the claimant, not of his nation, that are to be determined by the Tribunal. This should be contrasted with the situation of espousal of claims in international law . . . where claims are esposued by a State at its discretion . . ."[4]

In this same case the Tribunal also emphasized that it was "clearly an international tribunal established by treaty . . . and not an organ of a third State . . ."[5]

In this context, I would like to mention that since the Tribunal possesses the character of an international tribunal, governed by public international law, it does not apply any national (for instance, Dutch) conflict of laws rules, but instead applies general principles of conflict of laws.[6]

It might be added here that the Netherlands Government has recognized the legal status and capacity of the Tribunal as a legal person and has accorded it and its members and staff, privileges and immunities comparable to those accorded to other intergovernmental organizations.[7]

The Tribunal Rules empower the Tribunal at the request of either party to take any interim measures it deems necessary. The Tribunal has in this connection stated that it has inherent power to issue such orders

---

4. 5 Iran-U.S.C.T.R. 261-262.

5. Ibid. See also *Bendone-Derossi International* v. *The Government of the Islamic Republic of Iran,* 6 Iran-U.S.C.T.R. 133.

6. See *Economy Forms Corporation* v. *The Government of the Republic of Iran et al,* 3 Iran-U.S.C.T.R. 47-48 (applying the center of gravity doctrine) and *Harnischfeger Corporation* v. *The [Iranian] Ministry of Roads and Transportation et al.,* 7 Iran-U.S.C.T.R. 99 (applying the "most significant connection" doctrine).

7. See, in this respect, the decision of the European Commission of Human Rights on 12 December 1988, in the case of *Ary* v. *The Netherlands,* accepting the Tribunals' immunity from the jurisdiction of the Dutch courts in a case concerning the dismissal of a former Tribunal employee. In spite of all this, and the overriding provision in Article VII, paragraph 2, of the Claims Settlement Convention, cited at supra note 1, there exists no unanimous opinion whether or not the arbitral process before the Tribunal (including its awards) are subject to interference by national courts. Whatever it might be of interest to mention that in 1958 both the Constitutional Court of the Federal Republic of Germany and the European Commission of Human Rights denied jurisdiction over decisions rendered by the Supreme Restitution Court (now in Munich), an allied-German court dealing with claims by Nazi victims against the Federal Republic for compensation etc.

A thorough and imaginative analysis of the "nature" of the Tribunal is now to be found in David D. Caron, "The nature of the Iran-United States Claims Tribunal and the evolving structure of international dispute resolution" (1990), 4 *Am. J. Int. Law* 104. Caron's conclusion is that the arbitral proceedings before the Tribunal, at least those involving claims of nationals, are governed by the legal system of the Netherlands.

as may be necessary to conserve the rights of the parties before it and to give effect to its own decisions, and further, that any award issued by it will necessarily prevail over any inconsistent decision rendered by Iranian or United States courts. Thus, the Tribunal, on occasion, formally requested the Government of Iran, as a matter of international obligation, to take all appropriate measures to ensure that Iranian court proceedings be stayed until parallel proceedings before the Tribunal had been completed. Similarly in an interlocutory award of 1984 the Tribunal urgently requested

> "the Government of the United States of America to take all necessary and appropriate measures to prevent the sale of Iran's diplomatic and consular properties in the United States which possess important historical, cultural or other unique features, and which, by their nature, are irreplaceable."[8]

Many of the Tribunal's decisions relate to a determination of its jurisdiction. Thus, the Tribunal has been called upon to determine whether forum selection clauses in contracts forming the basis of claims before the Tribunal would have the effect of placing such claims outside the Tribunal's jurisdiction because of the wording of the Claims Settlement Declaration which excludes claims

> "arising under a binding contract ... specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts..."

In a series of interlocutory awards made on 5 November 1982, the Full Tribunal decided nine cases involving a total of 19 forum selection clauses. The Tribunal preferred not to address the question of whether the forum selection clauses (or the contracts) at issue were binding because of the fundamental changes that had occurred in Iran after the signing of the Algiers Declarations (or the conclusion of the contracts). The Tribunal concluded that it had not been granted a clear mandate to determine the "binding" nature of the forum selection clauses. Professor Lowenfeld, who has closely followed the jurisprudence of the Tribunal, thinks it came up with a good solution. "A general holding that the courts of Iran were unfair, or were unable to provide justice for American claimants, would inevitably poison the atmosphere in The Hague." He added that it was important for the cause of international arbitration that one of the American arbitrators, George Aldrich, shared the view of the majority on this point. The Full Tribunal thereupon closely analyzed the clauses, requiring explicit and unequivocal contractual language in order to oust the Tribunal's jurisdiction. As a result, neither the American claimants nor the Iranian respondents prevailed completely.

---

8. 5 Iran-U.S.C.T.R. 133.

Questions of nationality are of special significance in determining the jurisdiction of the Tribunal. The Claims Settlement Declaration defines the term "national" of Iran or the United States as — in the case of an individual, a citizen of either country and, in the case of corporations or other legal entities, those organized under the laws of either country if citizens of that country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock. While a birth certificate, a passport or a naturalization certificate might suffice to prove the citizenship of an individual, proving the nationality of a corporation — and in particular the nationality of a large, public company — will clearly be a complex, time-consuming and expensive procedure. Recognizing this problem, Chamber One, after much study and debate, has developed guidelines for proof of corporate nationality for multinational corporations, based on certain presumptions and generally available corporate documents.

These guidelines, have been accepted by the other Chambers as well. They are set forth in the *Flexi-Van* and *General Motors* cases.

In the case A/18 Iran requested the Full Tribunal to interpret the definition of the term "national" in the Claims Settlement Declaration and to state whether the Tribunal had jurisdiction over claims against Iran filed by persons who, during the relevant period were Iranian citizens under Iranian law, and United States citizens under United States law. The issue was a deeply emotional one for Iran, and could affect jurisdictional questions in approximately 330 claims, half of which belong to the larger claims above 250,000 dollars. Iran asserted the principle of absolute non-responsibility of a state for claims by its own citizens. However, the Tribunal in its decision of 6 April 1984 held that it was

> "satisfied that, whatever the state of the law prior to 1945, the better rule at the time the Algiers Declarations were concluded and today is the rule of dominant and effective nationality."

In so holding, the Tribunal pointed to the "pervasive effect" on the issue of the *Nottebohm* and *Mergé* decisions. The Full Tribunal then concluded its analysis with a statement placing the issue of dual nationality within the context of modern concerns for individual rights:

> "[The] trend toward modification of the [1930] Hague Convention rule of non-responsibility by search for the dominant and effective nationality is scarcely surprising as it is consistent with the contemporaneous development of international law to accord legal protection to individuals, even against the State of which they are nationals."

The Tribunal added that it would, in order to determine the dominant and effective nationality of a claimant "consider all relevant factors,

including habitual residence, center of interests, family ties, participation in public life and other evidence of attachment."

In report, No. 5, of 1988, published by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at the University of Lund, I discussed five cases on nationalisation of foreign property. The five cases dealt with are known by their short titles *INA, Starrett, Foremost, Sea-Land* and *Flexi-Van.* The standard of compensation for expropriated property in international law was discussed in general terms in the award in *INA,* and in particular in the two separate opinions and the dissenting opinion filed with it. In the *Starrett* case, governmental control of privately owned property was found to have reached the point at which it amounted to expropriation, and compensation was ordered under the Treaty of Amity between Iran and the United States of 1955, as *"lex specialis".* The Tribunal applied there the test of "fair market value" and utilized — in a short-time projection — the "Discounted Cash Flow Method". In *Foremost* the majority reached the conclusion that governmental interference with Foremost's property, while not amounting to expropriation prior to the Tribunal's jurisdictional cut-off date, 19 January 1981, still gave rise to a right to compensation for the temporary loss of enjoyment of the property in question. Relying on post cut-off events, *Foremost* has revived its action based on expropriation before a federal judge in the District of Columbia (see, Iranian Assets Litigation Reporter, 28 April 1989, at 17158-59). A majority of the Chamber in *Sea-Land,* while concluding that the evidence was insufficient to justify a finding that expropriation had occurred, upheld an alternative claim for compensation on the basis of unjust enrichment. Finally, in *Flexi-Van* the Chamber held that the mere assumption of governmental control over two corporations, leaving a substantial freedom in the corporations in their day to day activities, did not constitute expropriation of rights associated with contracts entered into by those corporations, concluding in addition, that there had been no interference or unjust enrichment requiring compensation.

In the months leading up to the Revolution in February 1979 and during the following months until the summer of 1979, the situation in Iran, at least in the major cities, was characterized by strikes, riots and other civil strife. This situation has given the Tribunal the unique opportunity to review many cases from the point of view of suspension of contracts, the existence of *force majeure* and termination of contracts by reason of impossibility or frustration.[9]

---

9. See, for instance, *Queens Office Tower Associates* v. *Iran National Airlines Corp.,* 2 Iran-U.S.C.T.R. 247; *Gould Marketing, Inc.* v. *The Ministry of National Defence of Iran,* 3 *Iran-*

The Claims Settlement Declaration, Article II, paragraph 1, gives the Tribunal jurisdiction over any counterclaim "which arises out of the same contract, transaction or occurrence that constitutes the subject matter" of the claim. At the beginning, this provision gave rise to many discussions with respect to counterclaims based on unpaid taxes and social insurance premiums. The Tribunal finally concluded that such counterclaims (other than withholding taxes specified in a contract or applied by the parties in practice) do not fall within the Tribunal's jurisdiction. The Tribunal has decided that such counterclaims arise by operation of the relevant tax and social insurance laws and not out of the contract. The Tribunal has also added that the same jurisdictional approach should apply for the purpose of a set-off. It has also been stated by the Tribunal that tax laws are manifestations of *jus imperii* which [without treaty provisions] cannot be extraterritorially enforced, and the Claims Settlement Declaration contains no provisions for such enforcement. The Tribunal has further observed that revenue laws are typically complex, so much that their enforcement is frequently assigned to specialized courts or administrative agencies.[10]

Problems, which often recur, concern questions of interest and costs. As to the rate of interest a court or a tribunal possesses a certain margin of appreciation for the balancing of rights involved. In the absence of a contractually stipulated rate, the Tribunal has exercised this discretion, applying rates varying from 8.5 percent to 12 percent. Chamber One (under the chairmanship of Professor Boeckstiegel) has tried to formulate a uniform rule (for a successful American claimant), that is, the "average rate of interest paid on six-month certificates of deposit in the United States" during the relevant period.[11] Judge Holtzmann proposed in the same case that it would be more appropriate to base the Tribunal's interest rate on the prime rate during the relevant period.[12]

Interest has been calculated, for instance, from the "date of breach", from the "date of substantiation", from "the date the claim was filed" or from "30 days after the date on which the claim was filed". In cases of nationalisation, interest has been calculated from the date of taking. However, the chairman, in footnote 63 of the final award in the case of

---

U.S.C.T.R. 147; Questech, Inc. v. *The Ministry ofNational Defence of the Islamic Republic of Iran,* 9 Iran-U.S.C.T.R. 107; *Touche Ross and Company, a Partnership* v. *The Islamic Republic of Iran,* 9 Iran-U.S.C.T.R. 284.

10. See, *Howard Needles Tommen & Bergenhoff* v. *The Government of the Islamic Republic of Iran et al.,* 11 Iran-U.S.C.T.R. 317-319.

11. *Sylvonia Technical Systems Inc.* v. *the Government of the Islamic Republic of Iran,* 8 Iran-U.S.C.T.R. 320-322.

12. Ibid, at 321.

Starrett, added that the said practice "does not necessarily reflect the existence of any general obligation in current international law to make payment of compensation immediately on the date of taking. Accordingly, it might be reasonable to allow interest to run only from the date or dates (in case of payments in installments) on which the compensation was to be paid."[13]

Chamber One, in its award of 27 June 1985 in the case of *Sylvania Technical Systems* summarized the Tribunal's practice as to costs as follows: "The Tribunal has not awarded costs in all cases, and even when it has, the amounts have generally been less than claimed. Chamber Two has never awarded any costs, Chamber One has awarded relatively small amounts of costs in only a few cases, and Chamber Three has in general awarded costs to the successful party in an amount well below the one claimed, using a range between $5,000 and $25,000 with cost of $70,000 awarded in one case. No distinction has been made between costs for legal representation and assistance and other costs, where costs were awarded."[14]

It may be noted that the United States members of Chambers One and Three (being practising lawyers from the United States) at least at the outset usually favoured the award of higher amounts as costs than did the West European chairmen.

V. *Conclusion*

The Tribunal is unique in many ways. It is unique in the manner of its creation — an element in a series of interlocking conditions negotiated under severe pressure of time. It is unique in that two nations between which nothing but suspicion remained, two nations culturally utterly distinct from one another, could come together in a long-term endeavour aimed at the orderly resolution of disputes on the basis of "respect for law".

I would like in this context to cite the following statement in the concurring opinion of Judge Hamid Bahrami-Ahmadi of 4 September 1986 in the case A/15 before the Full Tribunal: "We must always have in mind the fact that a noble, revolutionary Government has, under the most critical circumstances, expressed its willingness to settle its disputes by legal means, on the basis of international law, by having agreed to establish this Tribunal. The manner in which we deal with the issues confronting us can either encourage others to place their reliance on

---

13. *Starrett Housing Corporation et al.* v. *The Government of the Islamic Republic of Iran,* 16 Iran-U.S.C.T.R. 234.
14. Supra note 11, at 324.

international courts, or discourage them from doing so. Past events always light the way for those who follow."

While not perhaps unique with regard to the numbers of claims submitted to it (the United States-Mexican General Claims Commission received some 3,600 claims, and the United States-German Mixed Claims Commission established after World War I, received some 20,000), the amounts involved in the claims before the Tribunal are unprecedented. The total value of the claims filed with the Tribunal is of the order of some tens of billion of dollars. In addition there are counterclaims reaching very high, but the figures are hitherto unknown.

It is hardly appropriate for me, as the first president of this Tribunal, to try to assess its progress thus far in terms of "success" or "failure". It will be for history to make these judgments. However, it is common knowledge that one of the Governments and more especially individual claimants from one country find the pace of the Tribunal slow. Correspondingly, the other Government, deeply affected by revolution and war finds the pace of the Tribunal too fast. On the third-country arbitrators, and on the president in particular, devolves the onerous and thankless task of steering a firm, just and unruffled course between haste and endless delays.

The Tribunal represents a noble endeavour by two great nations to resolve bitter and potentially explosive controversies by peaceful and rational means. It is an endeavour fraught with innumerable difficulties of unprecedented complexity for those appointed to achieve this high purpose, demanding patience, firmness, good humour and a strong constitution. But I believe I speak for all my colleagues, members of the Tribunal past and present, in saying that we have felt privileged to be a part of it.

Two American lawyers wrote in the spring of 1984:

> "As an institution, the Tribunal represent a considerable achievement, operating in many respects at a substantial level of organization and competence. On the other hand, there remain potentially serious threats to the just and expeditious resolution of the many claims which are still pending."[15]

Premonitory signs were the occurrence from time to time of unorthodox, intense discussions within the Tribunal and the habit of many national arbitrators of "letting off steam" in their publicly available separate opinions.

---

15. Selby, Jamison M. and Stewart, Daniel P. "Practical Aspects of Arbitrating Claims before the Iran-United States Claims Tribunal" (1984), International Lawyer 243.

With regard to the disorderly events which occurred on 3 September 1984, shortly before the effective date of my resignation, and the instant suspension of essential parts of the Tribunal's activities, I wish to refer to my article, mentioned in note 1, *Realism in Law-Making.*[16]

Many proposals and suggestions were presented in good faith to resolve these temporary problems. Finally, on January 15, 1985 the activities of the Tribunal were fully resumed.

The interruption imposed on the Tribunal's activities gave everyone concerned time for reflection, and one may say that today the Tribunal continues its mission with cautious speed. As of 1 July, 1989, 775 large cases and 382 claims of less than $250,000 have by award, award on agreed terms or other decision been brought to an end. My estimate is that the Tribunal ought to have discharged its mandate within three years, or earlier, if lumpsum agreements will be concluded.

In making that estimate, I take into account the fact that a number of cases continue to be settled on agreed terms. To date, more than 1.5 billion dollars (excluding huge amounts of interest to be calculated by the Escrow Agent) have changed hands pursuant to the Tribunal's awards, including awards on agreed terms, with about two-thirds of that amount going to United States claimants.

No one would disagree, I think, that when the Tribunal's last award will have been signed, an important chapter in the history of international arbitration would be closed.

Stockholm, August 1989.

---

16. Supra note 1, at 127-130.