



THE ROLE OF THE IRAN-UNITED STATES CLAIMS TRIBUNAL IN THE DEVELOPMENT OF THE LAW OF STATE RESPONSIBILITY

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ABSTRACT

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

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Introduction

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

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

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

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

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

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

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

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



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

International arbitration, by contrast, lacks the stability and consistency characteristic of international adjudication. Even in institutional arbitration systems such as ICSID or WTO dispute settlement, where parties have less involvement in arbitrator selection, the diversity of tribunal compositions makes the development of arbitral jurisprudence more protracted and challenging compared to judicial practice. Strict adherence to precedent in international arbitration could compromise arbitration's advantages, including flexibility, confidentiality, and its foundation in party consent. Consequently, the doctrine of precedent as understood in common law systems finds little place in international arbitration. Nevertheless, arbitrators increasingly reference prior awards, both their own and those of other tribunals - a practice that can enhance stability and predictability in arbitration¹ while promoting procedural transparency.² Therefore, the role of international arbitral awards, like international judicial decisions, in identifying and interpreting rules of international law, as well as in the formation of customary international law, cannot be denied. The key to resolving this apparent contradiction lies in the concept of "persuasive precedent." In reality, while arbitral tribunals are not *de jure* bound to follow prior decisions, they frequently do so *de facto*.³

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

¹ Ibid., 12.

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

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

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

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

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

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

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

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

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

6. Separation of Powers and Judicial Independence

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

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

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

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

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

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

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

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



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

7. Breach of International Obligations: Expropriation

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

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

8. Effective Nationality

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

Iran's arguments about inadmissibility were first rejected in the *Esphahanian* case³ and the *Golpira* case⁴ by Chamber Two. The Full Tribunal then interpreted Article VII(1)(a) of the Claims Settlement Declaration at Iran's request, holding that claims by dual nationals fell within its jurisdiction if their dominant and effective nationality was established.⁵

9. Distinguishing State Succession from Government Succession

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

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

1 *Starrett Housing Corporation, Starrett Systems, Inc. and others v. The Government of the Islamic Republic of Iran, Bank Markazi Iran and others*, IUSCT Case No. 24, 1983, sec. 4-B, para.3.

2 *Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran*, IUSCT Case No. 7, 1984, para. 17.

3 *Nasser Esphahanian v. Bank Tejarat*, IUSCT Case No. 157, 1983.

4 *Ataollah Golpira v. The Government of the Islamic Republic of Iran*, IUSCT Case No. 211, 1983.

5 *Islamic Republic of Iran v. United States of America*, IUSCT Case No. A-18, 1984.

6 *Phillips Petroleum Company Iran v. The Islamic Republic of Iran, the National Iranian Oil Company*, IUSCT Case No. 39, para. 86.



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

Conclusion

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

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

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

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

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

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

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



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