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The Influence of the Iran-United States Claims Tribunal on ICSID and the Permanent Court of Arbitration in the Context of State Responsibility

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ABSTRACT

The Iran-United States Claims Tribunal (IUSCT) stands as one of the most significant international arbitral institutions, having adjudicated a wide array of disputes over several consecutive decades. It has generated a rich body of jurisprudence that warrants comprehensive analysis from various perspectives. One such dimension is its influence on international arbitration practices, which merits in-depth examination. This article aims to explore the impact of the IUSCT on the practices of the International Centre for Settlement of Investment Disputes (ICSID) and the Permanent Court of Arbitration (PCA) concerning state responsibility. To this end, the study employs a descriptive-analytical methodology, drawing on library-based data to achieve its objectives. The findings of the research indicate that the IUSCT has significantly influenced the arbitration practices of ICSID and the PCA in matters pertaining to state responsibility. For instance, the PCA, in cases such as Paushok v. Russia and Allard v. Barbados, which were conducted under international arbitration rules and UNCITRAL rules, has relied on the jurisprudence of the IUSCT to expand the scope of state responsibility in ensuring fair and equitable resolution of disputes with foreign investor companies. Similarly, ICSID, in cases like Santa Elena v. Costa Rica, has drawn on precedents from the IUSCT to develop the concept of state responsibility in matters involving compensation for expropriation of foreign investor companies and the determination of fair compensation amounts.

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Introduction

State responsibility is a cornerstone of contemporary international law, closely linked to issues of peace and security. Clarifying the principles of state responsibility and ensuring their enforcement strengthens the international legal order, particularly in addressing material and, in some cases, moral damages suffered by injured parties. The development of this legal framework is essential for safeguarding the interests of smaller states against more powerful ones. Against this backdrop, the Iran-United States Claims Tribunal (IUSCT) has played a pivotal role in shaping the principles of state responsibility through its extensive jurisprudence.

Established in 1981, the IUSCT has addressed numerous cases involving the attribution of state responsibility for the actions of private and public entities. The United Nations International Law Commission (ILC), in its concerted effort on state responsibility, has also grappled with these issues, balancing the non-attribution of private conduct to the state with the need to hold states accountable for certain actions. The IUSCT's decisions, grounded in international law and customary principles, have contributed significantly to the development of state responsibility as a legal doctrine.

This article seeks to address the following question: How has the Iran-United States Claims Tribunal influenced the practices of ICSID and the Permanent Court of Arbitration in matters of state responsibility? The hypothesis is that the IUSCT has had a profound impact on these institutions by developing and refining the concept of state responsibility. The article first examines the IUSCT's influence on the PCA's approach to state responsibility and then explores its impact on ICSID's jurisprudence.

1. The Influence of the IUSCT in the Context of State Responsibility in the Practice of the PCA

Just as the right of diplomatic protection arises from a state's right to protect its nationals abroad, the international responsibility of a state toward individuals is rooted in its obligation to administer justice and fairness. The connection between the right of diplomatic protection and the principle of the international standard of justice has been firmly established through international mechanisms, including international adjudication. Given that the international standard of justice is embedded

in the generally accepted principles of international law, the PCA has, in its rulings concerning the protection of aliens and their property, upheld this principle (UN Report on International Responsibility, 1956). This section examines the influence of the IUSCT on the PCA's practice in developing state responsibility toward individuals.

1.1. The Influence of the IUSCT on State Responsibility in Cases of Unlawful Expropriation of Foreign Investment

The case of *Saluka Investments v. Czech Republic* before the PCA is one of the most significant cases illustrating the influence of the IUSCT on state responsibility in matters of unlawful expropriation of foreign investments. The dispute arose from events following the reorganization and privatization of the Czech Republic's banking sector. During the communist era, the Czech Republic had a centralized banking system, which ended in 1990. The Czech Republic sold shares in one of its major banks, IPB,[1] to Nomura Group,[2] a private entity. Nomura, having acquired the shares, transferred them to Saluka, a legal entity established under Dutch law.[3]

Pursuant to Article 8 of the Agreement on the Promotion and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Czech and Slovak Republics, dated April 29, 1991, Saluka initiated arbitration proceedings against the Czech Republic on July 18, 2001. Under Article 8(5) of the treaty, the arbitral tribunal was required to apply the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).[4]

It is worth noting that the Czech and Slovak Federal Republic dissolved on December 31, 1992, and the Czech Republic and Slovakia emerged as independent states. The Czech Republic assured the Netherlands that the treaty would remain in force between the Czech Republic and the Netherlands following the dissolution.

Saluka claimed that the Czech Republic had acted inconsistently with its obligations under the bilateral investment treaty between the Netherlands and the Czech Republic. Specifically, Saluka argued that it had been deprived of its investment in violation of Article 5 of the treaty and that it had not been treated fairly and equitably as required under Article 3.[5]

While the parties disagreed on certain facts and their interpretation, the PCA held that the principle that "a State does not incur liability for compensation to a foreign investor for measures taken within its regulatory powers, provided such measures are not discriminatory or arbitrary," forms part of customary international law today. The PCA cited *Emanuel Too v. United States*,[6] in which it was stated that "a State is not liable for the loss of property or economic damage resulting from the good-faith application of tax laws or other measures ordinarily within the state's regulatory powers, provided such measures are not discriminatory or aimed at coercing the alien to surrender property to the state or sell it at a low price."[7]

1 Investiční a Poštovní banka a.s./IP banka a.s., one of the Big Four banks = IPB

2 The **Nomura Group** is a major Japanese conglomerate specializing in **banking services** and **merchant banking**. It typically operates through subsidiaries established in various countries.

3 Mohammad Sadegh Teymouri et al., 'Indirect Expropriation of Foreign Investors' (2018) 6(24) *Private Law Research Journal* 9, 3639-.

4 Suzy H Nikièma, *Best Practices: Indirect Expropriation* (International Institute for Sustainable Development 2012) 89.

5 Markus Krajewski, 'Direct and Indirect Expropriation' in *UNCTAD Annual Capacity Building Program on International Investment Agreements* (UNCTAD 2015) 214.

6 Emanuel Too v. Greater Modesto Insurance Associates and The United States of America, IUSCT Case No. 880

7 Ibid., p. 460.

Thus, it is the role of the arbitrator to determine whether the State's actions cross the line from lawful regulation to expropriation. In addressing the question of "when, how, and at what point regulatory measures amount to unlawful expropriation," international tribunals must consider the circumstances in which the question arises. The context in which the contested measure is applied is crucial in determining its validity.[1]

The PCA also referred to *Emanuel Too v. United States*, stating that "the claimant has failed to prove that local police and fire authorities did not make sufficient efforts to protect his property. According to the claimant's own admission, local police authorities conducted investigations in several instances where he had formally filed complaints. These included cases of property destruction, embezzlement, and the arson of one of his trucks. In each case, the police initiated investigations, and in one instance, legal proceedings were commenced but later halted due to the claimant's refusal to press charges. The claimant did not assert that he had requested special protection from local authorities or that such protection was denied due to his Iranian nationality. Finally, the circumstances surrounding the arson of the restaurant by the local fire department were investigated… The claimant has failed to prove that local authorities did not make sufficient efforts to protect his property or to investigate its destruction. Consequently, the tribunal rejects the claim."[2]

Regarding the issue of unjust enrichment arising from expropriation, the PCA referred to the *Isaiah Case* in the IUSCT and rejected the claimant's argument: "The concept of unjust enrichment is recognized as a general principle of international law found in the laws of most nations (general principles of law). In international law, unjust enrichment is an important element of state responsibility. Therefore, this principle requires that one party's enrichment must be at the expense of another, and both must result from the same act or event. There must be no justification for the enrichment, and no other remedy should be available to the injured party to recover damages from the enriched party."[3]

The theory of unjust enrichment is widely accepted in U.S. law, with its primary emphasis on the concept of "unjustness." Once an increase in one person's assets at the expense of another is established—a determination primarily within the purview of judicial authorities—the resolution of the dispute largely depends on the correct application of the concept of "unjustness" within the framework of legal principles and standards. In Iranian law, the principle of unjust enrichment is not explicitly mentioned, but it is reflected in various provisions of the Iranian Civil Code, such as Article 301.

In summary, the PCA found that the respondent's treatment of Saluka's investment was, in certain respects, unfair and inequitable. The respondent had violated the standard of fair and equitable treatment and had not provided a reasonable justification for its actions. Consequently, the respondent had breached Article 3 of the treaty and was liable to compensate the claimant for the damages incurred.

The UNCITRAL tribunal in *Saluka v. Czech Republic* held that regulatory expropriation

1 Mohsen Abdollahi and Ali Hassan Khani, 'Protection of Individual Rights: Analysis of the ICJ's Judgment in Guinea v. Congo' (2014) 13(45) *Journal of Public Law Research* 31-52.

2 IUSCT, Emanuel Too, Award No. 2-880-460

3 IUSCT, Isaiah, Award No. 2-219-35

encompasses governmental measures that deprive investors of the use and enjoyment of their property, even if such measures do not involve a formal transfer of ownership. Regulatory expropriation is based on governmental regulations concerning health, safety, environmental rights, and cultural policies.[1] It is worth noting that laws and regulations enacted in good faith and for legitimate purposes do not fall within this definition. The Tribunal stated: "The principle that a state's adoption of general regulations within its regulatory powers does not constitute expropriation is widely accepted in customary international law, and there is extensive practice supporting this view."

The IUSCT has considered the duration of domestic regulations in the host State as a significant factor in determining indirect expropriation. In one of its rulings, the IUSCT stated: "...when the events indicate that the owner has been deprived of fundamental property rights and the deprivation is not merely temporary, a finding of expropriation is justified...."[2] The Tribunal held that the temporary seizure of an investor's property by the Iranian government could be considered indirect expropriation, as the deprivation of the investor's property rights, though temporary, was not short-term.

1.2. The Influence of the IUSCT on State Responsibility in the Fair and Equitable Resolution of Disputes with Foreign Investors

The case of *Yukos Universal Limited v. The Russian Federation*[3] is a prime example of the IUSCT's influence on state responsibility in the fair and equitable resolution of disputes with foreign investors. The dispute, heard by the PCA under Article 26 of the Energy Charter Treaty and UNCITRAL rules, arose from the Russian government's actions against Yukos, a major oil company. Yukos was established in 1993 and privatized in 1995-1996. The company, along with its subsidiaries, was involved in the extraction, production, refining, marketing, and distribution of crude oil, natural gas, and petroleum products.

Yukos shareholders alleged that the Russian government initiated criminal proceedings against Yukos' senior management while the company was negotiating a merger with ExxonMobil. The government accused Yukos and its executives of various crimes, including embezzlement, fraud, forgery, and tax evasion. Other actions by the Russian government included reassessing Yukos' tax liabilities, imposing additional taxes, seizing Yukos' assets, canceling its merger with Sibneft, and forcing the sale of Yuganskneftegaz, Yukos' most valuable asset. These actions ultimately led to Yukos' bankruptcy and liquidation, with its assets sold at auction to state-owned companies Rosneft and Gazprom.

In 2005, Yukos' major shareholders, including Hulley Enterprises, Yukos Universal, and Veteran Petroleum, initiated arbitration proceedings against Russia under Article 26 of the Energy Charter Treaty,[4] pursuant to UNCITRAL rules and under the auspices of the PCA.[5] The

1 Matti Pellonpää and David D Caron, *The UNCITRAL Arbitration Rules as Interpreted and Applied*(Finnish Lawyers' Publishing 1994) 435.
2 Ruling No. 141-7-2, dated June 22, 1984, issued in the case of *Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran et al.*
3 Yukos Universal Limited v. The Russian Federation (UNCITRAL, PCA Case No. AA 227), Final Award Rendered on 18 July 2014.
4 **Article 26: Settlement of Disputes Between an Investor and a Contracting Party**
5 Craig Bamberger, Jan Linehan, and Thomas Waelde, *The Energy Charter Treaty in 2000: In a New Phase* (Oxford University Press 2000) 130-.

shareholders claimed that Russia had not treated their investment fairly and equitably and had expropriated their assets, in violation of Articles 10(1)[1] and 13(1)[2] of the Energy Charter Treaty.

In response, Russia raised significant objections regarding the Tribunal's jurisdiction and the admissibility of the claims.[3] Russia argued that none of the entities in question were under its control or supervision, citing the IUSCT's decision in *Flexi-Van Leasing, Inc. v. Iran*, which referenced Article 8 of the ILC's Draft Articles on Responsibility of States for Internationally Wrongful Acts (the ARSIWA).[4,5]

Russia further argued that the importance of a causal link between the challenged measures and the investors' investment had been affirmed by international tribunals, including the IUSCT in *Otis Elevator Co. v. Iran*.[6] The claimants, in turn, cited several legal sources, including the IUSCT's decision in *Amoco International Finance Corp. v. Iran*,[7] concluding that in cases of unlawful expropriation, investors are entitled to choose between the valuation date of the breach and the date of the award.[8]

The PCA also referred to the IUSCT's decision in *Sylvania Technical Systems, Inc. v. Iran*[9] regarding the calculation of interest on investments, stating: "In the absence of a specified interest rate in the contract, the arbitral tribunal calculates the interest rate based on the amount that the claimant could have earned through a conventional investment in its home country had it received the award in a timely manner." The Tribunal noted that this approach had been followed in other IUSCT decisions.

The PCA, influenced by the IUSCT, concluded that the claimant was entitled to the full present value of compensation that should have been paid at the time of expropriation. The expropriating State could not enrich itself by delaying compensation. The Tribunal examined

1 **Article 10: Promotion, Protection, and Treatment of Investments:**
1. Each Contracting Party shall, in accordance with the provisions of this Treaty, encourage and create stable, equitable, favorable, and transparent conditions for investors of other Contracting Parties to make investments in its territory. Such conditions shall include a commitment to accord at all times fair and equitable treatment to investments of investors of other Contracting Parties. Furthermore, such investments shall enjoy full protection and security, and no Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, or disposal of such investments. In no case shall such investments be accorded treatment less favorable than that required by international law, including treaty obligations. Each Contracting Party shall observe any obligation it has entered into with regard to an investor or an investment of an investor of any other Contracting Party.

2 **Article 13: Expropriation:**
1. Investments of investors of a Contracting Party in the territory of any other Contracting Party shall not be nationalized, expropriated, or subjected to a measure or measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") except where such expropriation is: a. For a purpose which is in the public interest; b. Not discriminatory; c. Carried out under due process of law; and d. Accompanied by the payment of prompt, adequate, and effective compensation.
Such compensation shall amount to the fair market value of the expropriated investment immediately before the expropriation took place or before the impending expropriation became publicly known, whichever is earlier. At the request of the investor, the fair market value shall be determined in a freely convertible currency on the basis of the market exchange rate prevailing for that currency at the date of valuation. Compensation shall also include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

3 Mohammad Ali Bahmei and Mohsen Borhani, 'The Jurisdiction of the Arbitration Tribunal in the Yukos v. Russia Case' (2018) 15(2) *Journal of Private Law* 323-347.

4 **Article 8: Conduct Directed or Controlled by a State**; The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons was in fact acting on the instructions of, or under the direction or control of, that State.

5 Marcin Katdunski, 'Some Reflections on Arbitration in the Yukos v. Russia Case' (2014) Institute of Comparative Law Publications, 141-167.

6 Otis Elevator Company v. The Islamic Republic of Iran and Bank Mellat (formerly Foreign Trade Bank of Iran), IUSCT Case No. 284, Award No. 2-284-304.

7 Amoco International Finance Corporation v. The Government of the Islamic Republic of Iran, National Iranian Oil Company, National Petrochemical Company and Kharg Chemical Company Limited, IUSCT Case No. 56, Partial Award No. 3-56-310.

8 Aloysius Llamzon, 'Yukos v. Russia: The State of the Unclean Hands Doctrine in International Investment Law' (2015) 30(2) *Foreign Investment Law Journal* 315325-.

9 Sylvania Technical Systems, Inc. v. The Government of the Islamic Republic of Iran, IUSCT Case No. 64, Award No. 1-64-180.

two issues: (a) the date of expropriation of the claimant's investment by the respondent, and (b) whether the claimant had the right to choose the valuation basis between the date of expropriation and the date of the award. Ultimately, the PCA ruled that Russia had breached Article 13 of the Energy Charter Treaty and was liable to compensate the claimants for the damages resulting from the unlawful expropriation of Yukos' assets.

Furthermore, the case of *Allard v. Government of Barbados*[1] was adjudicated by the PCA under the UNCITRAL Arbitration Rules. The dispute concerned Peter Allard's investment in the acquisition and development of an eco-tourism site in Barbados. The claimant, Mr. Allard, alleged that Barbados failed to take reasonable and necessary measures to protect the environment and, through its organs and agents, directly contributed to the pollution of the eco-tourism site in question, thereby diminishing the value of the investment.[2]

According to the claim, Barbados' actions and omissions constituted a breach of its international obligations toward Canadian investors under the 1996 Agreement between the Government of Canada and the Government of Barbados for the Promotion and Reciprocal Protection of Investments.[3]

The claimant, referencing the *Emanuel Too v. United States* case before the IUSCT, argued that in determining whether a State has acted appropriately in protecting and securing investments, it is essential to consider whether the host State took adequate measures to apprehend offenders or enforce penalties against wrongdoers. The PCA, also citing the *Emanuel Too* case from the IUSCT, held that protecting claimants against unlawful expropriation does not impede a State's freedom to enact general laws or take non-discriminatory measures within the scope of its regulatory authority.

2. The Development of State Responsibility in ICSID Practice

The International Centre for Settlement of Investment Disputes (ICSID) is a leading arbitral institution for resolving disputes between states and foreign investors. As such, ICSID's arbitral practice is of great significance in both procedural and substantive matters. This section examines the development of state responsibility in ICSID practice.

2.1. The Influence of the IUSCT on State Responsibility in Compensating Foreign Investors

Article 42(1) of the ICSID Convention provides: "The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable." Thus, in cases involving state responsibility for internationally wrongful acts, ICSID tribunals have jurisdiction to award compensation or other remedies in disputes arising from investments between member states and their nationals. Some of these claims directly invoke international law as their basis.[4]

1 Peter A. Allard v. The Government of Barbados, PCA Case No. 2012-06

2 Alberto Alvarez-Jimenez, 'The International Law Gaze: Allard v. Barbados' (2018) 1(1) *New Zealand Law Journal* 321324-.

3 Gunnar Lagergren, 'Iran-United States Claims Tribunal' (1995) 13(2) *Dalhousie Law Journal* 519.

4 Alireza Ebrahim Gol, *Translation of the United Nations International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2nd edn, Shahre Danesh Publication 2011) 209.

On June 2, 1995, ICSID received a request for arbitration from Santa Elena, a Costa Rican company, dated May 15, 1995. Most of the company's shareholders were U.S. nationals. The claimant sought to initiate arbitration proceedings against Costa Rica under the ICSID Convention, to which both the United States and Costa Rica were parties. The claimant alleged that the dispute arose from the expropriation of Santa Elena's property and sought compensation for the damages incurred.

The ICSID tribunal stated that, in the absence of a request by the parties to modify the ICSID arbitration rules, it would follow the procedures outlined in Article 44 of the ICSID Convention.[1] The arbitration was conducted in accordance with Section 3 of Chapter IV[2] of the ICSID Convention and the ICSID Arbitration Rules.

On May 5, 1978, Costa Rica issued an expropriation decree for Santa Elena. Over the nearly twenty-year period from the expropriation in 1978 to the initiation of arbitration in 1995, the parties had faced delays and intermittent litigation in Costa Rican courts. Each party blamed the other for the prolonged delay in resolving the compensation issue. The ICSID tribunal found that the assignment of blame or fault to either party did not affect the outcome of the case and did not require the Tribunal's consideration. The key issue for the Tribunal was that no compensation had been paid by Costa Rica for the expropriation from 1978 to 1995. Thus, the only issue for the Tribunal to determine was the amount of compensation owed to the claimant for the expropriation.[3]

The ICSID tribunal's reliance on the IUSCT is evident in its acceptance of the principle that a State must compensate a foreign investor for expropriated property. The Tribunal held that the obligation to pay compensation lies with the expropriating State, whether under Costa Rican law or international law. Even in cases of lawful expropriation, the terminology used to describe the "amount of compensation payable" varies, including terms such as "full," "adequate," "appropriate," "fair," and "reasonable," sometimes accompanied by additional descriptors such as "market value."

In this case, the ICSID tribunal avoided delving into doctrinal debates on the standard of compensation and held that compensation should be based on the fair market value of the asset, calculated with reference to its highest and best use. The Tribunal cited the IUSCT's decision in *Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran*,[4] which held: "The deprivation or taking of property under international law can occur through State interference with the use or enjoyment of property, even if such interference does not affect legal title. While the State's assumption of control over property does not automatically justify the conclusion that the State has expropriated the property and is thus liable to pay compensation under international law, such a conclusion is justified when the events indicate that the owner has been deprived of fundamental property rights and the deprivation is not merely temporary.

1 **Article 44**: All arbitration proceedings shall be conducted in accordance with the provisions of this Section, unless the parties agree otherwise, in which case the arbitration shall be governed by the agreed procedural rules. In the event of any procedural question arising that is not addressed by this Section, the arbitration procedure, or any rules agreed upon by the parties, the arbitral tribunal shall have the authority to determine such matter.

2 Powers and Functions of the Tribunal

3 Charles N Brower and Jarrod Wong, *General Valuation Principles: The Case of Santa Elena* (Oxford University Press 2005) 22.

4 Tippetts, Abbett, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran, IUSCT Case No. 7, 141.

The State's intent is less important than the effects of its actions on the owner, and the form of control or interference is less significant than the reality of its impact."

The IUSCT's decision in *the Tippetts case* indicates that state responsibility under investment treaties is not limited to the expropriation of investor property. The possibility of invoking state responsibility by investors under bilateral and multilateral investment treaties gives this responsibility a distinct character, somewhat separate from the general regime of state responsibility. The ICSID tribunal, citing the IUSCT's decision in *Tippetts case*, noted that a wide body of authority supports the view that property is considered expropriated when the owner is deprived of title or access to the economic benefits and use of the property.

2.2. The Influence of the IUSCT on State Responsibility in Determining Fair Compensation for Foreign Investors

Another example of the IUSCT's influence on state responsibility is its impact on the determination of fair compensation for foreign investors. In determining the fair market value of Santa Elena's property as of the expropriation date (May 5, 1978), the ICSID tribunal used an approximate valuation based on the parties' assessments in 1978 and referenced several IUSCT decisions. The Tribunal cited the IUSCT's decision in *AIG Capital Partners, Inc. v. Kazakhstan*,[1] which stated: "From the above, it is possible to arrive at results that reasonably establish the minimum and maximum value of the company. However, the range between these two limits is extraordinarily wide, and to determine the company's value within this range, the Tribunal must resort to an approximate valuation, taking into account all relevant circumstances of the case."[2]

In line with the IUSCT's decision, the ICSID tribunal held that the valuation of investor assets in expropriation cases must be fair and consider the specific circumstances. The Tribunal noted that in *Phillips Petroleum Co. v. Iran*,[3] the IUSCT had recognized the need to determine "the price that a willing buyer would have paid for the asset at the time of expropriation," based on all relevant circumstances, including equitable considerations.

The ICSID tribunal further stated: "The IUSCT in *Starrett Housing Corp. v. Iran*[4] recognized that determining the fair market value of any asset inevitably requires considering all relevant factors and exercising judgment and discretion…. In *the Starrett case*, the Tribunal based its decision on an expert report using the discounted cash flow (DCF) method, though it made various adjustments to the conclusions and figures obtained. The need for such adjustments is understandable, as the Tribunal's valuation must account for all relevant circumstances, including equitable considerations."

Santa Elena claimed that it was entitled to compound interest on the value of the property as of 1978, calculated from the expropriation date. The respondent argued that no interest had accrued from the expropriation and that the claimant was only entitled to simple interest at a nominal rate.

However, the ICSID tribunal, citing the IUSCT's decision in *Flexi-Van Leasing, Inc. v.*

1 AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan, ICSID Case No. ARB/01/6, 93.
2 Ibid., 109.
3 Phillips Petroleum Company Iran v. The Islamic Republic of Iran, the National Iranian Oil Company, IUSCT Case No. 39, 39-425.
4 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, 314.

Iran,[1] rejected the respondent's argument and held that in cases like the present one, compound interest (where warranted by the circumstances) is not excluded.

The ICSID tribunal referred to the IUSCT's decision in *Sylvania Technical Systems, Inc. v. Iran*,[2] in which "the tribunal never awarded compound interest," and specifically stated:

"In the view of this chamber, justice and equity require that a consistent method be adopted and applied in awarding interest in cases before this chamber. The rates specified in contracts, unless there are special circumstances, should be accepted by the Tribunal. In the absence of a specified interest rate in the contract, the arbitral tribunal calculates the interest rate based on the amount that the claimant could have earned through a conventional investment in its home country had it received the award in a timely manner. Six-month deposits in the United States are a type of investment whose average interest rate can be obtained from an official and reliable source. The Tribunal notes that there are precedents in arbitral tribunals where, in separate and unique cases, the interest awarded was calculated based on the borrowing rate from banks in the claimant's country, and sometimes the prime rate was used.[3] However, given the circumstances of this Tribunal, where a large number of parties are involved in a vast number of cases, it is appropriate to adopt a uniform approach, and therefore it is more appropriate to determine the interest rate based on the yield on investment over the relevant period. To achieve this uniformity, the interest on awards can be determined based on deposit (bank) rates, which are essentially similar and available to all investors. Compared to deposit rates, borrowing rates vary depending on the creditworthiness and reputation of borrowers, not all of whom are able to borrow at the prime rate, and the creditworthiness and reputation of some may change over the relevant period. Moreover, not all those who suffer from delayed payment actually borrow. For these reasons, determining a general interest rate based on the prime rate for all awards is, in most cases, realistic…. The practice that the Tribunal has followed so far in awarding interest has not been entirely uniform. Although the chambers generally act uniformly in awarding interest based on compensation for delay, and although the Tribunal has never awarded compound interest, the rates applied by the Tribunal have rarely been uniform. The Tribunal accepts the rates specified in contracts, and therefore agreed upon by the parties: 'though it has been said that unreasonable or usurious rates will not be applied….' However, in the absence of a specified interest rate in the contract, the Tribunal has, at its discretion, applied rates between 8.5% and 12%, which it deemed fair."

Based on these arguments, the ICSID tribunal ruled that Costa Rica was liable to pay compensation to Santa Elena.

Conclusion

Attribution is one of the elements of state responsibility for breaches of international obligations under international law, which sets out various conditions and criteria for attributing wrongful acts

1 Flexi-Van Leasing, Inc. v. The Government of the Islamic Republic of Iran, IUSCT Case No. 36, 259. ("Most awards allocate only simple interest, but occasionally compound interest has been awarded").

2 Sylvania Technical Systems, Inc. v. The Government of the Islamic Republic of Iran, IUSCT Case No. 64, 180.

3 In the United States, the **prime rate** refers to the preferential interest rate that financial institutions employ as a reference point for establishing loan terms for their most creditworthy commercial borrowers.

to a State. For state responsibility to arise, three conditions must be met: (1) an act or omission inconsistent with an international obligation; (2) sufficient evidence to attribute the breach to a specific state; and (3) harm resulting from the wrongful act or omission.

The Iran-United States Claims Tribunal, as an international arbitral institution with over four decades of experience in various areas of international responsibility, has demonstrated that the attribution of acts by legal and natural persons is governed by the United Nations International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts (the ARSIWA) and other general and specific rules of international law, which the Tribunal has taken into account.

The IUSCT, as one of the most influential institutions in the development and interpretation of international law, particularly in the context of treaties and contracts, has contributed to the gradual evolution of international law. The Tribunal has established a coherent approach to interpretation, consistent with international arbitral practice. By relying on the Algiers Accords, which recognized it as the authority for resolving disputes and interpreting the Accords, the Tribunal has drawn on implicit obligations derived from treaties and contracts to supplement textual interpretation.

The tribunal's approach to interpreting the Algiers Accords has been based on the principles set out in Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties, as well as "general principles of law" and "international customary law." The effort to create a framework for arbitration by international judicial bodies is one of the greatest legal achievements of the century. A key aspect of UNCITRAL's role in this process has been to provide rules that harmonize arbitral procedures worldwide.

The IUSCT has played a significant role in establishing UNCITRAL's rules, which, despite being less than four decades old, have emerged as highly influential global arbitration rules. The Tribunal's practice in applying UNCITRAL rules has been extensive and remains among the most important in this field.

Given the absence of a hierarchy among international arbitral tribunals, the IUSCT, like other such tribunals, has not been bound by the principle of precedent. However, the Tribunal's progressive interpretations in resolving disputes, coupled with the subsequent reliance on its decisions in later arbitral awards and judicial rulings, as well as their reflection in international conventions and treaties, demonstrate the widespread acceptance and recognition of the IUSCT's decisions among international actors. This reflects a movement toward the gradual development of international law.

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