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The Role and Position of the Principle of Good Faith in the Iran-United States Claims Tribunal

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ABSTRACT

The Iran-United States Claims Tribunal can be regarded as one of the most important arbitration bodies in history. The arbitrators of this institution have referred to general principles of law, citing Article 5 of the Claims Settlement Declaration, in various cases for decision-making. Among the general principles of law, if not the most important, undoubtedly one of the most important principles is the principle of good faith. This principle plays a significant role in ensuring justice and fair adjudication. The present study, using library and documentary sources and a descriptive-analytical method, examines the role and status of the principle of good faith in the Iran-United States Claims Tribunal. The research findings show that the tribunal, recognizing the importance and role of the principle of good faith in ensuring justice and fair adjudication, has referred to and established a bridge between the two legal systems of Iran and the United States in various procedural and substantive instances. The principle of good faith has played an important role in the tribunal.

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Introduction

Traditionally, Article 38(1)(c) of the Statute of the International Court of Justice (ICJ) is referenced as the foundation for general principles of law, which can be defined as sources of law recognized by various states as the origin of rights and obligations due to their rational basis.[1] In other words, general principles of law are the legal sources that represent the common denominator across all legal systems. Marcelo Vázquez-Bermúdez, the Special Rapporteur of the International Law Commission on general principles of law, identifies three functions for this legal source: first, to fill legal gaps; second, to serve as the origin of many legal rules; and third, as a tool for interpreting rules.[2] In summary, general principles of law are among the most important legal sources, playing a crucial role in ensuring justice.

Among these principles, if not the most important, the principle of good faith is certainly one of the most significant general principles of law, serving as the foundation for many legal rules, including *estoppel*, *prohibition of fraud and corruption*, *prohibition of abuse of rights*, *prohibition of abuse of process*, and *the doctrine of clean hands*.[3] Furthermore, in the absence of specific rules, the principle of good faith *per se* can be invoked by the adjudicator to aid in their decision-making. This principle has been repeatedly cited by judges and arbitrators in international legal proceedings.[4]

The Iran-United States Claims Tribunal (hereinafter referred to as "the Tribunal") was established to resolve disputes between the two nations following the 1979 diplomatic crisis involving the U.S. Embassy in Tehran, subsequent to the issuance of the Algiers Accords in 1981. Many experts consider this tribunal to be the largest arbitration body in history. This institution has played a significant role in shaping arbitration practices in various

1 For further reading on the concept and nature of general principles of law, see: Fardrooz A and Amir Arjmand A, 'General Principles of International Law in the System of Public International Law' (1995) 1 *Legal Research* 16-17.; Mahmoodi Kordi Z, 'The Nature of General Legal Principles and Their Functions in International Law' (2018) 35 *International Legal Journal* 329-364.; Rezevska D, *General Principles of Law: Natural Rights, Legal Methods and System Principles* (Brill Nijhoff 2024).

2 United Nations, 'Third Report on General Principles of Law' A/CN.4/753 (2022).

3 Boroumand B F, Shahbazinia M and Arabiyaan A, 'The Good Faith of Parties in Arbitration (A Comparative Study in Iranian and English Law)' (2020) 24 *Quarterly Journal of Comparative Studies* 4.

4 For further reading on the judges' and arbitrators' invocation of the principle of good faith, see: Mirabasi S B and Saadati S Z, 'The Function of Recognized General Legal Principles in Civilized Nations in the Jurisprudence of International Arbitration Tribunals' (2023) 16 *International Legal Research* 23-46.; Alhavi Nazari H and Mohammadi A, 'Analyzing the Dimensions of the Principle of Good Faith in International Law in Light of Jurisprudence' (2015) 32 *International Legal Journal* 99-126.; Sipiorski E, *Good Faith in International Investment Arbitration* (Oxford University Press 2019).; Kolb R, *Good Faith in International Law* (Brill Nijhoff 2018).

commercial and investment matters, frequently citing the importance of general principles of law in issuing fair judgments and ensuring justice.[1] Among these principles, *the principle of good faith* holds considerable significance, and arbitrators have invoked it in various cases.

This research seeks to explore the role and significance of the principle of good faith within the Tribunal, structured in two main discussions. Given that the Tribunal serves as a connector between the two legal systems of Iran and the United States, the first discussion examines the theoretical foundations of the principle of good faith in both legal systems. Subsequently, in the second discussion, the manifestation and embodiment of the principle of good faith in the constituent documents and practices of the Tribunal will be studied.

1. Theoretical Foundations of Good Faith in Iranian and U.S. Law

The Tribunal has, over the years since its establishment and due to its unique composition of judges, become a meeting point for the two legal systems of Iran and the United States. Consequently, during the proceedings of a case, legal concepts from both legal systems are juxtaposed, leading to a clash of traditions in interpreting these concepts. This interplay has resulted in blended interpretations, making the study of these interactions essential for the development of legal knowledge. Therefore, it is necessary to first address the theoretical foundations of good faith and examine its approach and significance within both legal systems, which will be discussed in this section through two independent subsections.

1.1. The Principle of Good Faith: Conceptualization, Types, and Significance

Good faith, from a linguistic perspective, lacks a clear-cut and universally accepted definition. As evidence of this claim, a well-known definition states that good faith encompasses a mental state that includes: (1) honesty in belief or intention, (2) commitment to one's obligations or duties, (3) adherence to reasonable commercial standards in a specific business or transaction, or (4) absence of intent to deceive or gain an unfair advantage.[2] This complexity in definition has led some authors to adopt a negative approach, defining good faith as the absence of bad faith. Thus, good faith is characterized as the absence of intent to cause harm and the absence of actions contrary to reasonable standards.[3]

On the other hand, the term "good faith" appears deceptively simple at first glance; however, determining its instances and boundaries proves to be quite challenging.[4] In this respect, good faith lacks a coherent and consensus-based definition.[5] One American scholar has compiled

1 This issue has been addressed in various sources. For example, see: Mohebi M, *The Iran-United States Claims Tribunal: Nature, Structure, Function* (transl Mohammad Habibi) (Tehran: Shahr Danesh 2011) 188-199.; Khalilian SK, *Legal Claims of Iran and the United States Presented in the Hague Arbitration Tribunal* (Tehran: Public Publishing Company 2003) 194-196.

2 Bryan A. Garner (ed), *Black's Law Dictionary* (9th edn, West 2009) 762.

3 Jafarzadeh MQ and Simaei Sarraf H, 'Good Faith in International Contracts: A Universal Rule or an Exceptional Provision' (2005) *Legal Research* 41, 136. Also see: *Collection of Rulings of the Iran-United States Claims Tribunal, Volume 5* (Tehran: Presidency of the Republic, Deputy for Codification, Revision, and Publication of Laws and Regulations 2014) 279.

4 Jafarzadeh et. al., *ibid* 136.

5 International Centre for Settlement of Investment Disputes (ICSID), in the case of *Inceysa Vallisoletana, S.L. v. Republic of El Salvador*, stated: "Good faith is a general principle that governs legal relationships in all aspects and content." (*Inceysa Vallisoletana, S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26). Additionally, B. Cheng noted in his book *General Principles of Law as Applied by International Courts and Tribunals* that "good faith requires that each party should be able to rely on the statements of the other party, in such a way that a reasonable person would interpret those statements in that context." Quoted from *Collection of Rulings of the Iran-United States Claims Tribunal, Volume 2* (Tehran: Presidency of the Republic, Deputy for Codification, Revision, and Publication of Laws and Regulations 2012)

three fundamental definitions provided by courts in the United States regarding good faith, stating that good faith is either a sacred expression of fundamental contract law principles, a general limitation on bad faith without a specific meaning, or a barrier against reasserting waived privileges. In clarifying the apparent contradiction among these definitions, it is noted that the interpretation of good faith in the context of its application carries special significance, and depending on the stance, any of these meanings may be correct.[1]

Furthermore, while good faith is recognized as a general principle of law, the conduct associated with good faith, which is rooted in this progressive principle, is also significant. In this sense, good faith is seen not merely as a general principle of law but as the underlying spirit governing behavior, which, as previously indicated, stands in direct opposition to bad faith.

In terms of types of good faith, to assist the focus of this research, good faith can be divided into substantive and procedural categories. This means that good faith oversees the proper formation and fair execution of contracts as an additional force, and in the event of a breach and ensuing disputes, the resolution of these conflicts—from initiation to conclusion—requires another form of good faith, referred to as procedural good faith.[2] All the aforementioned instances exemplify behavior accompanied by good faith, which, it is important to reiterate, all derive from the same general principle of law.[3]

Although the concept of good faith has a long-standing history in human thought, it has never held as much significance as it does today. Currently, good faith is recognized as a general principle of law that serves as both a creator and an inspiration for various legal rules. This means that the functional role of this general principle is to give rise to different legal norms from its various aspects, each of which independently impacts and regulates relationships within distinct legal domains. Rules such as estoppel, the clean hands doctrine, the prohibition of abuse of rights, and the prohibition of fraudulent conduct[4] are all derived from this foundational principle.

Moreover, courts and arbitral tribunals typically do not directly invoke these principles unless no specific rule has emerged within a particular domain from that principle, or the principle itself is recognized as a rule and cited accordingly.

Another important point is that no legal system tolerates fraudulent acts that violate good faith, whether such bad faith occurs at the time of contract formation or during the exercise of other rights, or in the course of litigation.[5] Consequently, it can be stated that good faith occupies a lofty position in any legal system, even if it is not explicitly codified. It is clear that an entire legal system is built upon this concept, and one would be hard-pressed to find a legal system that does not recognize the necessity of good faith within its legal texts, even if there is no explicit provision demanding it. Legislators, jurists, or judges within that system would not accept that bad faith and fraudulent conduct are permissible in that legal framework, which would otherwise be foreign to the concept of good faith.

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1 Jafarzadeh et. al., *ibid* 136-137.

2 Boroumand et. al., *ibid* 4-5.

3 Section 19 of the Uniform Commercial Code of the United States defines good faith as “honesty in fact in the conduct or transaction.”

4 Fraus legis

5 Boroumand et. al., *ibid* 18.

Lastly, it should be acknowledged that while this principle has experienced fluctuations in meaning and implications throughout history, and has seen periods of prominence as well as obscurity, it can be confidently asserted that good faith has manifested in legal thought at least since ancient Roman times and continues to be enshrined in the written law and judicial practice of various legal systems today.[1] For instance, it is reflected in Articles 101-2, 201-3, and 205 of the Uniform Commercial Code of the United States, as well as in certain legal provisions in Germany and various Iranian laws.

1.2. Comparative Study of the Principle of Good Faith in the Legal Systems of Iran and the United States

In the common law legal tradition, England does not have a suitable approach to good faith as a general rule for various reasons, such as the predictability of legal outcomes and effects. Conversely, in continental Europe and the Romano-Germanic legal tradition, there is a more open view of good faith.[2] The moralization of contracts is considered a value, and therefore, good faith is given special attention as a means to express this value. Traditionally, England has been the driving force behind the common law legal tradition; however, in the context of good faith, the United States has emerged as a precursor.

In the U.S. legal system, the principle of good faith and its implications are recognized. Judge Lord Mansfield was the first to argue in the case of *Carter v. Boehm* (1766) that good faith governs all contracts.[3] Although this argument faced opposition later, it ultimately opened the door for the application of this concept in the legal system, allowing the United States to distance itself from its traditional rival, England. As a result, with the existence of Articles 201-3 of the Uniform Commercial Code, the U.S. has become a leader in the recognition of the principle of good faith, influencing other common law jurisdictions that also recognize good faith.[4]

Some writers claim that it is not only Mansfield's opinion that led to the acceptance of good faith in U.S. law but also that of Professor Llewellyn, who was a primary drafter of the Uniform Commercial Code. He studied and taught in Germany and introduced the concept inspired by the rule of *Glauben und Treu* in German civil law into American private law.[5] Therefore, the American approach to good faith is considered an exception compared to others in the common law, leading some scholars to view the U.S. as a bridge between written and customary legal systems. They argue that, regarding the approach and acceptance of good faith, the United States plays a dual role: it is a pioneer in customary law and acts as a mediator concerning the meaning of this concept in written law.[6]

In the U.S. legal system, good faith is based on ethics, justice, necessity, and custom, encompassing a wide range of issues from preliminary negotiations, formation, execution,

1 Jafarzadeh et. al., *ibid* 141-142.
2 Article 242 of the German Civil Code (BGB) states: "The debtor is obliged to act in accordance with the requirements of good faith and fair dealing, taking into account customary practices."
3 Steyn, *The Role of Good Faith and Fair Dealing in Contract Law: A Hair-Shirt Philosophy* (1991) 138.
4 Jafarzadeh et. al., *ibid* 157.
5 Amini and Ebrahimi, *Good Faith in Contracts: From Theory to Practice; A Look at the Subject in Common Law* (2011) 26.
6 Jafarzadeh et. al., *ibid* 159.

interpretation, and enforcement of contracts in substantive law[1] to estoppel, the prohibition of concealing evidence, and the obligation to provide documents in procedural law.[2]

In the Iranian legal system, which is also attached to the civil law legal tradition and has a strong Islamic jurisprudential aspect, good faith is seen in various forms as scattered rules. While no one denies that the legal system (and indeed any legal system) is based on good faith, the existence of a general rule regarding good faith in Iranian law is questioned by some scholars. Some believe that there is no clear and independent rule regarding good faith in Iranian law and that it must be derived from examining different, and consequently exceptional, rulings.[3] Others argue that good faith is indeed a general rule in Iranian law.[4]

In Iranian law, although good faith is not explicitly recognized as a principle, some legal scholars contend that the outcomes of this principle can be found in various forms and titles. Good faith appears in rules related to deceit, undue advantage, and in titles such as bona fide possessor, bona fide holder of a commercial document, etc.[5] In this legal system, good faith is discussed in property law in terms of the effects of possession, whether in good faith or not, and in contract law at various stages, including before, during, and after the formation of contracts. Furthermore, its influence is not limited to these areas and can be traced in other domains as well.[6]

2. The Manifestation of the Principle of Good Faith in the Iran-United States Claims Tribunal

In this section, the Tribunal's approach to the concept of good faith will be examined. The first part will analyze the basis for invoking good faith in the Tribunal's constituent documents, while the second part will address the application of good faith in the Tribunal's jurisprudence, divided into procedural and substantive aspects of this concept.

2.1. The Principle of Good Faith in the Governing Rules of the Tribunal

The rules of the Iran-United States Claims Tribunal, as stated in Paragraph 1 of Article 33 of the amended UNCITRAL rules, specify that "the Tribunal shall decide all cases based on respect for the law and the selection of those legal provisions and principles of commercial and international law that, in the Tribunal's judgment, are applicable, while also considering commercial customs and relevant contractual provisions." This article aligns perfectly with Article 5 of the Dispute Resolution Declaration.[7]

As mentioned in Paragraph 1 of Article 33 and Article 5 of the Dispute Resolution Declaration, the Tribunal's judges are permitted to invoke general principles of law that they

1 Jafarzadeh et. al., *ibid* 199-229.
2 Boroumand et. al., *ibid* 4-5.
3 Katouzian and Abbaszadeh, *Good Faith in Iranian Law* (2013) 168, 181.
4 *ibid* 179-180.
5 See also *ibid* 167-186 and Hajipour, *Manifestations of the Principle of Good Faith in Imamiyyah Jurisprudence* (2011) 94-123.
6 Various provisions from different laws, including Article 96 bis 1 of the Maritime Law (2012), Article 680 of the Civil Code, Article 154 of the Commercial Code, etc.; for a detailed list, see Katouzian and Abbaszadeh, *ibid* 167-186. For further reading on the concept of good faith in the common law and Romano-Germanic tradition, see: Davies, *Good Faith in Contract Law* (2020).; Beatson and Friedman, *Good Faith and Fault in Contract Law* (1997).; Brownsword, Hird and Howells, *Good Faith in Contract: Concept and Context* (1999).
7 Statement of the Democratic and Popular Republic of Algeria on the Settlement of Disputes between the United States of America and the Islamic Republic of Iran (Dispute Settlement Statement) (29 October 1980).

deem applicable. It has been noted earlier that the principle of good faith and its derivatives are among the most important general principles of law[1] and serve as the foundation for many subsidiary rules that arise depending on the subject matter. Therefore, when invoking the principle of good faith, the judges of this Tribunal are committed to adhering to the limits of the laws governing the proceedings, and thus no disruption is perceived from this perspective.

2.2. The Principle of Good Faith in the Tribunal's Jurisprudence

The Tribunal has referenced the principle of good faith in various rulings. This ranges from procedural issues such as the admissibility of claims and jurisdiction to substantive issues like expropriation. The Tribunal has also frequently utilized the principle of good faith when interpreting its constituent documents. In summary, the Tribunal recognizes the importance of good faith as a cornerstone for fair adjudication. This discussion will categorize the Tribunal's jurisprudence regarding the principle of good faith into two main topics: procedural issues and substantive issues.

Before delving into the discussion, it is crucial to highlight the distinction between the principle of good faith and conduct in good faith. This distinction appears to have been overlooked by many authors and legal scholars writing about the Tribunal. In other words, the principle of good faith is a primary source of law from which various obligations such as estoppel, prohibition of fraud and corruption, abuse of rights, abuse of process, and the clean hands doctrine have emerged. It can also be invoked independently and in the absence of specific rules. In contrast, conduct in good faith refers to the behavior of parties aligning with these established norms.

Just as there exists a difference between equity and equittable conduct, we find that equity in common law systems is considered an independent legal institution, whereas equittable conduct is understood universally among people. Everyone has an understanding of equittable conduct, but to grasp the concept of equity requires careful study of its precedent and practice. Thus, we believe that in many instances within the Tribunal's jurisprudence, what is presented is not an invocation of the principle of good faith as a rule, but rather attention to conduct in good faith as a consequence of the principle. Many instances where the term "principle of good faith" is used in the Tribunal's decisions reflect this misunderstanding; rather, it would be more accurate to reference conduct in good faith, as in most cases, good faith is referred to not as a general principle of law that generates rights and obligations, but as the prevailing spirit of a certain conduct.

2.2.1. The Manifestation of the Principle of Good Faith in Procedural Issues in the Tribunal's Jurisprudence

Procedural issues in arbitration encompass a wide range of topics governing the arbitration process, including matters such as jurisdiction, the admissibility of claims, and issues related to the taking of evidence. Ensuring equity and efficiency in these procedural matters is vital for the integrity of the arbitration process. In this context, the principle of good faith plays a crucial role in guiding these procedural issues and has been invoked by the Tribunal in various instances.

1 United Nations, 'Third Report on General Principles of Law' A/CN.4/753 (2022).

Regarding the issue of jurisdiction, the Tribunal's handling of the matter of dual nationality is noteworthy. It is essential to mention that the Tribunal, based on Article 2 of the Dispute Resolution Declaration, has specific jurisdiction in handling claims, and the necessity of adhering to good faith in interpreting this article has resulted in an independent jurisprudence in this regard. In this context, when a claim was brought by a dual national of Iranian-American descent who had benefited from their Iranian nationality, the Tribunal invoked the principle of good faith and related concepts such as prohibition of abuse of rights, prohibition of abuse of process, and the clean hands doctrine to issue a ruling of inadmissibility or dismissal of the claim.

For instance, the Islamic Republic of Iran, in its defense in Case No. 419 (*Rouhollah Karoubian v. The Government of the Islamic Republic of Iran*), stated that "since the claimant has filed a claim as an American citizen before this Tribunal and as his claims pertain to interests that, according to the notice decision in Case 'A/18'[1] and the principles of clean hands, estoppel, good faith, and prohibition of abuse of rights—which are practiced in international law—are inadmissible."[2] The Tribunal concluded that this could constitute an abuse of rights.

Additionally, in its defense in Case No. 266 (*Mousa Aryeh v. The Government of the Islamic Republic of Iran*), Iran asserted that "since the claimant has filed a claim as a citizen of the United States and his claim involves benefits that, under Iranian law, are exclusively for Iranian citizens, therefore, the notice in Case 'A/18' prevents his claim. The respondent states that mere ownership of immovable property in Iran by a dual national, in itself, prevents the Tribunal from awarding damages for the claim, and thus the notice serves to 'filter claims that are not admissible at the substantive hearing stage.' It does this through the application of international law principles, including abuse of rights, good faith, clean hands, misrepresentation of facts, concealment of material facts, estoppel, and state responsibility."[3] The Tribunal similarly concluded that this could constitute an authorization for an abuse of rights.

In Case No. 485 (*Frederica Lincoln Riahi v. The Government of the Islamic Republic of Iran*), the Islamic Republic stated, "The claimant is prohibited from invoking her American citizenship, as allowing such a claim would constitute an abuse of rights and contradict the principles of good faith and clean hands."[4] The Tribunal determined that invoking American citizenship could amount to an authorization for an abuse of rights.

In Case No. 269 (*Albert Broukhim v. The Government of the Islamic Republic of Iran*), the Tribunal faced a situation regarding the modification of the date of the claim and recognized that changing this date could affect the claimant's nationality and consequently disrupt the Tribunal's jurisdiction. Therefore, in the justifications for the ruling, when intending to make a preliminary decision regarding the claimant's effective nationality, it stated: "Although the Tribunal generally assumes that the claimant has specified the date of the claim in good faith,

1 This warning states: "In cases where the Tribunal rules on the basis of the predominant and effective nationality of the claimant, the other nationality of the claimant may remain relevant and valid in terms of the nature of the dispute." (A/18 Decision No. 32 (10 May 1984)). See Aqa Hosseini M, 'An Examination of the Positions and Views of the Islamic Republic of Iran and the United States in Case A/18 of the Iran-United States Claims Tribunal Regarding Dual Nationality' (1985).

2 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 11 (Tehran: Deputy for Codification, Revision, and Publication of Laws and Regulations, 2016), 256.

3 *ibid* 645.

4 *ibid* 949.

should it later appear, after considering the arguments related to the other matters in the case, that the claim actually arose before the date of acquiring Iranian or American nationality, as applicable, this assumption does not prevent the Tribunal from declaring the claim inadmissible in this arbitration."[1]

Another important point to note is that the necessity of adhering to good faith (or, as previously mentioned, conduct in good faith) during the proceedings is not limited to the parties involved but extends to the arbitrators as well. In Case No. 35 (*R.J. Reynolds Tobacco Company v. The Government of the Islamic Republic of Iran and the Iranian Tobacco Company*), one of the adjudicating judges, in a separate opinion, elaborated on a situation that, in his view, detracted from "good faith in the proceedings." He specifically noted that the failure to hold a deliberative session was detrimental to a fair process: "It is assumed that arbitral awards should be issued after sufficient deliberation among the arbitrators regarding the matters raised in the case that have been discussed and argued by the parties. The present award against the respondents is based on unsubstantiated arguments concerning issues that, due to their lack of relevance to the points at dispute, were not discussed or deliberated by the parties. Therefore, the award is legally null and void."[2]

In conclusion, the Tribunal has addressed cases involving dual nationality with an emphasis on the principle of good faith alongside other derived rules such as clean hands, estoppel, and the prohibition of abuse of rights and process. In these instances, the Tribunal has repeatedly stated that individuals with dual nationality cannot exploit their dual status to gain unfair advantages or circumvent legal obligations. By invoking the principle of good faith and the related rules, the Tribunal ensured that the claimant's assertions were made with honesty and integrity, thereby preserving the legitimacy of the arbitration process and leading to a fair adjudication. Thus, it can be concluded that the principle of good faith plays a significant role and holds an important position in procedural matters within the Tribunal's jurisprudence.

2.2.2. The Emergence of the Principle of Good Faith in Substantive Issues in the Tribunal's Jurisprudence

Unlike procedural issues, which pertain to the processes governing arbitration, substantive issues encompass the main matters in dispute during arbitration and include the rights and obligations of the parties involved. Similar to procedural matters, the principle of good faith plays an important role in guiding substantive issues as well.

For example, the Tribunal's approach to expropriation can be referenced, whereby it considers expropriation that does not serve the public interest to lack legitimacy based on the principle of good faith. In Case No. 56 (*Amoco International Finance Corporation v. The Government of the Islamic Republic of Iran, National Iranian Oil Company, National Petrochemical Company, and Khark Chemical Company with Limited Liability*), the Tribunal states: "Expropriation whose sole purpose is to evade governmental contractual obligations cannot be deemed legitimate under international law. Such expropriation is fundamentally

1 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 9 (Tehran: Presidential Office, Deputy for Codification, Revision, and Publication of Laws and Regulations, 2015), 650.

2 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 5 (Tehran: Presidential Office, Deputy for Codification, Revision, and Publication of Laws and Regulations, 2015), 318.

contrary to the principle of good faith, and deeming it legitimate conflicts with the established rule that a government may bind itself via contracts with foreign companies."[1] This ruling illustrates the essential role of the principle of good faith in the Tribunal regarding matters such as expropriation. The Tribunal examines whether expropriations were conducted in pursuit of public interest or merely to evade contractual obligations.[2]

In this context, it is important to note that Judge Richard M. Mosk, in justifying a dissenting opinion in Case No. 100 (*Hood Corporation v. The Islamic Republic of Iran, Central Bank, and Bank Mellat*), notes that while the right to impose currency restrictions for the sake of public benefit is recognized for governments, if such restrictions lead to a form of control over foreign nationals' investments, then this action, although initially legitimate, becomes impermissible due to its contravention of good faith. Therefore, such authority must be exercised reasonably and in good faith.[3]

Another aspect of reasoning based on good faith (or, as previously mentioned, conduct in good faith) manifests in the interpretation of contracts. It has been noted that in various legal systems, one of the most significant domains for invoking good faith is in contract law, particularly in the interpretation of concluded agreements. As seen in Case No. 180 (*Harnischfeger Corporation v. Ministry of Roads and Transportation, Organization for the Development and Modernization of Industries of Iran, Arak Machine Manufacturing, and Pars Machine Manufacturing*), the Tribunal states: "The Arbitration Tribunal believes that it would be contrary to the principle of good faith to allow Harnischfeger to later invoke a contract against the manufacturer when the fundamental conditions for its conclusion have not been met at all."[4] Interestingly, this case references Article 242 of the German Civil Code (the rule of Glauben und Treue), which was previously mentioned in discussing the concept and position of good faith in various legal systems.[5]

Moreover, in the execution of contracts, performance in good faith leads to legal consequences, and a breach of this principle is deemed a basis for liability in the Tribunal's jurisprudence. As the claimant in Case No. 494 (*International Systems and Controls Corporation v. National Iranian Gas Company, National Iranian Oil Company, and the Islamic Republic of Iran*) stated, "Failure to perform any express or implied contractual duty in good faith, without any legal excuse, constitutes a breach of contract and holds the breaching party liable for damages."[6] Consequently, the Tribunal considers the respondent's continual non-compliance with obligations, which had previously been communicated to them, as inconsistent with performance in good faith.[7]

The Tribunal has frequently invoked the principle of good faith in various cases when interpreting the Algiers Accords. For instance, in Case No. 'A/11' (commonly known as the

1 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 8, 220.
2 It is observed in the Tribunal's rulings that discriminatory behavior towards a foreigner, aimed at coercing the foreigner to relinquish property to the state or to sell it at a distress price, is considered contrary to good faith (see: *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 9, 353, para 26).
3 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 5, 227.
4 *ibid*, 298.
5 See also *ibid*, 550, footnote 3.
6 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 9, 373.
7 *ibid*, 384, para 109.

Assets of the Pahlavi Family), it is noted that "there is no deadline established in the Algiers Accords for the issuance of the aforementioned orders. In the absence of an explicit deadline, the Tribunal invokes the principle of good faith in treaty interpretation and concludes that the United States was obliged to issue the said orders 'within a reasonable time.' Therefore, the Tribunal must examine what such a reasonable period could have been under the existing circumstances."[1] This ruling illustrates the significant role that the principle of good faith plays in the interpretation of legal rules. By applying the principle of good faith in its interpretation, the Tribunal ensured that justice is achieved by adhering to the essense of the law rather than merely its text.

Additionally, the Tribunal has sought to interpret the Dispute Resolution Declaration in good faith. In this context, in Case No. 'A/18', two judges in a dissenting opinion state: "It is particularly important to recall that the Algiers Accords were concluded with the spirit of good faith, and that same spirit should govern their execution or interpretation. Therefore, yielding to the current inclination of the United States, which apparently seeks to transform the Accords (originally considered a peaceful resolution) into a means of political pressure on Iran, has no justification."[2]

In conclusion, similar to procedural issues, the Tribunal has systematically utilized the principle of good faith in addressing substantive matters and has sought to facilitate a fair adjudication by invoking the derivatives of this general principle of law (including conduct in good faith, as this study has claimed).

Conclusion

General principles of law hold a significant role and position among legal sources. According to the report of the International Law Commission regarding general principles of law, this legal source can play an important role in filling gaps in legal rules or obligations, as well as serving as a tool for interpreting legal norms. Among these general principles, the principle of good faith stands out as prominent and important in both domestic legal systems and international law. This principle underlies various legal rules, such as estoppel, the prohibition of fraud and corruption, abuse of rights, abuse of process, and clean hands, indicating its widespread influence on the legal system.

Within the framework of the Iran-United States Claims Tribunal, under Article 33(1) of the amended UNCITRAL rules and Article 5 of the Dispute Resolution Declaration, the judges of the Tribunal are permitted to invoke general principles of law that they deem relevant. Therefore, when invoking the principle of good faith, the commitment of the judges to adhere to the limits imposed by the governing laws during proceedings is recognized, and this does not introduce any disruption. Indeed, the invocation of the principle of good faith has been evident in various procedural and substantive instances within the Tribunal's jurisprudence.

Regarding procedural issues, the Tribunal has addressed cases of dual nationality by invoking the principle of good faith, along with prohibitions against the abuse of rights, the

1 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 2, 158.
2 *Collection of Rulings of the Iran-United States Claims Tribunal*, Volume 2, 622.

abuse of process, and the clean hands doctrine, resulting in rulings of inadmissibility or dismissal of claims. Additionally, in substantive matters, the Tribunal has deemed expropriations lacking legitimacy based on the principle of good faith when they do not serve the public interest. The Tribunal has also engaged in the interpretation of rules based on the principle of good faith in various instances.

Ultimately, the principle of good faith occupies an important role and position in the Tribunal's rulings, and the Tribunal has realized this significance by establishing a connection between the two legal systems of Iran and the United States, which are rooted in different legal traditions. This achievement is remarkable in the realm of international dispute resolution.

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