



EXAMINATION OF THE MECHANISM GOVERNING THE RECOGNITION AND ENFORCEMENT OF AWARDS ISSUED BY THE IRAN-U.S. CLAIMS TRIBUNAL WITH EMPHASIS ON THE APPLICABILITY OF THE 1958 NEW YORK CONVENTION

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ABSTRACT

The Iran-United States Claims Tribunal is an international body established based on agreements reached in the Algiers Accords, tasked with resolving legal disputes between the parties and their nationals. The Tribunal's contribution in reducing conflicts and the volume of cases handled demonstrates its effectiveness in peacefully settling disputes and implementing beneficial arbitration practices. However, controversies exist regarding the enforcement of the Tribunal's awards, particularly as paragraph 7 of the General Declaration stipulates the establishment of a Security Account by Iran to secure the enforcement of financial judgments against the country, while no specific provisions are made for other awards. This situation has led to Iran's objections regarding the absence of a similar mechanism for the enforcement of awards in its favor, deeming the recognition and enforcement framework of the New York Convention inadequate in this context. The present study aims to analyze the enforcement mechanism of the Tribunal's awards through a descriptive-analytical method, focusing on the applicability of the recognition and enforcement framework of the 1958 New York Convention. The central research question is: What mechanism governs the recognition and enforcement of awards issued in favor of Iranian parties? The fundamental hypothesis posits that, according to existing practices, the New York Convention is applicable to the enforcement of these awards. Research findings indicate that the New York Convention possesses the necessary capacity for the enforcement of the Tribunal's awards. Furthermore, the Tribunal's dual nature, addressing claims from two states as well as claims from nationals of one state against another, does not create an obstacle in this regard.

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Introduction

The objective of the parties involved in any dispute is to obtain a final and enforceable judgment through sometimes lengthy litigation processes. The issuance of a final judgment and its enforcement are directly related to the resolution of disputes and emphasize the inviolability of the legal rules governing individuals and states. Therefore, studying the enforcement of awards issued by any tribunal is significant when assessing the functionality and role of that tribunal in resolving disputes. In this context, the examination of the recognition and enforcement framework of awards, as well as their finality and binding nature, are pertinent topics.

The exploration of this subject concerning the awards issued by the Iran-United States Claims Tribunal (IUSCT, the Tribunal) is particularly challenging. In addition to the complexities arising from international disputes between states and between states and their nationals, the political transformations following the 1979-Islamic Revolution in Iran and the lack of friendly relations between the two countries may also affect the recognition and enforcement of the Tribunal's awards.

These complexities prompted the parties to provide for a special mechanism for the enforcement of awards issued in favor of American claimants in paragraph 7 of the General Declaration.¹ The measure taken seems commendable, considering the ease of enforcing these awards, as it allows the award creditor to execute the award without resorting to judicial authorities. However, a persistent issue that remains ambiguous and has provoked Iran's objections in various instances is the absence of a similar mechanism for the enforcement of awards rendered in favor of Iran. Consequently, in addition to the interpretations provided by various courts, Iran has requested the Tribunal to interpret the obligations of the United States regarding the enforcement of awards under the Algiers Accords² in cases such as A/21³ and A/27.⁴

¹ All funds in the Security Account shall be utilized solely to guarantee the payment and settlement of claims against Iran as stipulated in the dispute resolution declaration. Whenever the Central Bank notifies Iran that the balance of the Security Account has fallen below \$500 million, Iran shall promptly restore the account balance to \$500 million by depositing additional funds. This balance shall be maintained at that level until the Chair of the Arbitration Tribunal, established under the dispute resolution declaration, certifies to the Central Bank of Algeria that all arbitration awards against Iran have been executed. In such a case, the remaining balance of the Security Account shall be transferred to Iran.

² Retrieved from <https://jusmundi.com/fr/document/decision/en-the-islamic-republic-of-iran-v-the-united-states-of-america-award-award-no-568-a27-ft-wednesday-6th-may-1998>, para.2, last accessed September 20, 2024.

³ IUSCT, Award No. A-21_62 Case A/21.

⁴ IUSCT, Award No. 586-A27-FT Case A/27.



Iran's objections specifically focus on the inadequacy of the New York Convention in relation to the recognition and enforcement of the Tribunal's awards. Therefore, it is essential to address the question of what mechanism the Algiers Accords provide for the enforcement of awards, and whether the stipulated conditions for enforcing these awards align with the mechanisms envisioned in the Algiers Accords. Despite the lack of explicit provisions in the Accords for a specific mechanism for enforcement, aside from what is mentioned regarding the Security Account, the New York Convention, as the most widely acclaimed international agreement regarding the enforcement of arbitration awards, also governs the awards issued by the Tribunal.

This paper examines various aspects of the enforcement of awards issued by the IUSCT in two sections. The first section elaborates on the mechanism provided in paragraph seven of the General Declaration, presenting the positions of Iran and the United States regarding this mechanism and ultimately the Tribunal's interpretation in this regard. The second section will scrutinize the applicability of the recognition and enforcement framework of the New York Convention to the awards issued in favor of Iran.

The aforementioned reviews are conducted using library resources, particularly the awards issued by the Tribunal, and a descriptive-analytical methodology. Current literature in Persian regarding the enforcement of the Tribunal's awards is limited to the article "International Arbitration, the Iran-U.S. Claims Tribunal, and the Enforcement of Its Awards."¹ In reviewing existing literature in English, the available works primarily focus on elucidating the mechanisms governing the Algiers Accords, with discussions on the applicability of the New York Convention being notably sparse.

1. Examination of the Mechanism Provided in the Algiers Accords

The instruments of the Algiers Accords include the General Declaration,² the Dispute Resolution Declaration,³ and the commitment documents⁴ of each state. Given that these documents were established between states as subjects of international law, concerning their obligations to one another and their nationals, they qualify as an international treaty.⁵ Article 1 of the Vienna Convention⁶ defines a treaty as "an international agreement concluded in writing between states and governed by international law, whatever its particular designation, and whether embodied in a single instrument or in two or more related instruments." The Algiers Accords align perfectly with this definition.

References in Article 5 of the Dispute Resolution Declaration to principles of commercial law, international law, trade customs, contractual provisions, and *the rule of changed circumstances*

1 Behnam Tirafkan, 'International Arbitration: The Iran-U.S. Claims Tribunal and the Enforcement of Its Awards' (2021) *Fourth International Conference on Legal and Judicial Studies* 139.

2 Declaration of The Government of The Democratic and Popular Republic of Algeria (General Declaration), 19 January 1981.

3 Declaration of The Government of The Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by The Government of The United States of America and The Government of The Islamic Republic of Iran (Claims Settlement Declaration), 19 January 1981.

4 Undertakings of The Government of The United States of America and the Government of The Islamic Republic of Iran With Respect to The Declaration of The Government of The Democratic and Popular Republic of Algeria, 19 January 1981

5 Gaillard and Savage, *International Commercial Arbitration*, Kluwer Law International (1999) 115; The authors contend that in this regard the Algiers Accords qualify as a *bilateral treaty*.

6 Vienna Convention on the Law of Treaties (1969)

serve as evidence of this assertion.¹ One of the institutions established by the Algiers Accords is the Tribunal, which was agreed upon in the Dispute Resolution Declaration. Accepting that the constituent document of the Tribunal is a treaty and pertains to public international law has direct implications for the nature and status of this authority in international law; treaties are the basis for establishing *inter-state arbitration*. In contrast, *private arbitration* is established through arbitration agreements among private individuals and entities.

The Iran-U.S. Tribunal was created by treaty; however, since it also has jurisdiction over commercial disputes between individuals and states,² it is arguably closer in nature to private³ arbitration. This aspect has led many to consider the Tribunal as having a hybrid nature

The contracting states have adopted the 1976 UNCITRAL rules,⁴ with necessary modifications,⁵ making the arbitration process governed by this document. However, specific agreements regarding the enforcement of the Tribunal's awards are notably present in paragraph 7 of the General Declaration. This provision establishes a specific enforcement regime for financial awards issued in favor of American parties. The anticipation of such a mechanism in the General Declaration, coupled with instances of non-enforcement of awards in favor of Iran, has brought the issue of the parties' obligations regarding the enforcement of awards before the Tribunal for interpretation by the arbitrators.⁶ The above issues are examined below.

1.1. Mechanism for the Enforcement of Awards Issued in Favor of the United States

The Algiers Accords facilitate and ensure the enforcement of Tribunal awards by establishing an Security Account intended to guarantee the enforcement of awards issued in favor of the United States. According to paragraph 6 of the General Declaration, half of the funds and securities of Iran that were seized by American banks must be transferred to an Security Account that Iran will open,⁷ allowing American claimants with monetary awards in their favor to execute those awards from this account. The Central Bank of Algeria will issue the transfer order to the beneficiary based on the Tribunal's ruling and the directive of the Tribunal's Chair.

Under paragraph 7 of the General Declaration, the initial value of the funds in this Security Account was set at over one billion dollars. If the balance falls below \$500 million during the Tribunal's activities, Iran is obligated to restore the amount to \$500 million.⁸

1 Mohsen Mohebi, 'The Legal Nature of the Iran-U.S. Claims Tribunal from the Perspective of International Law' (1994) 13 *International Legal Journal* 95-144; Ali Maroosi, *Report on the Awards of the Iran-United States Claims Tribunal*, Volume One (Deputy for Drafting, Codification, and Publication of Laws and Regulations 2011).

2 The Tribunal's jurisdiction is articulated in Article 2 of the Dispute Settlement Declaration as follows:

a) Claims by nationals of the United States against Iran, claims by nationals of Iran against the United States, and any counterclaims arising from the agreements, transactions, or events that form the basis of the claim by the respective national...

b) Official claims by Iran and the United States against each other...

c) Disputes concerning the interpretation or implementation of the provisions mentioned in the Declaration.

3 David Caron, 'The Nature of the Iran-United States Claims Tribunal and the Evolving Structure of International Dispute Resolution' (1990) *American Journal of International Law* 104. 112-114.

4 The parties to the Algiers Declaration did not make any changes to its provisions; rather, the Tribunal's arbitrators reviewed the stipulated rules and, after implementing the desired modifications, agreed on the final version of the rules governing the Tribunal, titled *The Final Tribunal Rules of Procedure*.

5 *mutatis mutandis*

6 IUSCT, Award No. 586-A27-FT Case A/27, paras 2,3,4.

7 The aforementioned account was opened at the Netherlands Settlement Bank in accordance with the Technical Agreement with N.V. Settlement Bank of Netherlands.

8 Maroosi, *Report on the Awards of the Iran-United States Claims Tribunal* (2011) 26.



The issue concerning the restoration of the Security Account's balance has led to disputes in Case A/1.¹ The United States claims that, according to the provisions of the Accords, all interest from the Security Account must be held in the account alongside the principal amount to ensure the payment of all awards against Iran. In contrast, Iran contends that the interest should belong to it as soon as it accrues, since the funds in the Security Account are considered Iranian property and should be paid to Iran before the awards are executed.² Additionally, Iran has never agreed to maintain an amount exceeding one billion dollars in the Security Account, making the U.S. request inconsistent with the provisions of the Algiers Accords. Ultimately, the Tribunal determined, based on the common intent of the parties, banking customs, and the purpose of the Algiers Accords, that the interest should be deposited into a separate account at the Dutch Settlement Bank as soon as it accrues. Iran should have access to this account to restore the Security Account if necessary.³ Although this mechanism does not impose an additional obligation on Iran regarding the Security Account, it serves as an extra guarantee for the enforcement of awards issued in favor of the United States.⁴

Another critical issue worthy of consideration in this section is the beneficiaries of the Security Account. It is important to note that various classifications of cases have been presented before the Tribunal. For instance, regarding the nature of the disputes being addressed, Case A involves the interpretation or enforcement of the Algiers Accords, while Case B pertains to formal claims made by the United States and Iran against each other.⁵ According to Article 7 of the Dispute Resolution Declaration, the Tribunal's jurisdiction encompasses two categories of disputes: first, private disputes—those between nationals of either party against each other or against the contracting parties, whether natural or legal persons, arising from debts, contracts, asset seizures, or any other actions affecting property rights; and second, official disputes—those between Iran and the United States arising from agreements concerning the sale and purchase of goods and services.⁶

In instances where a ruling has been issued against the Iranian government (and not against its nationals), the beneficiaries of the Security Account include both categories mentioned above. This implies that the awards issued in favor of the US extend beyond its government to also include its nationals, such as companies and legal entities that may benefit from the financial resources of the Security Account for the enforcement of their awards.⁷

The wording of the General Declaration and the Dispute Resolution Declaration indicates a lack of specific enforcement mechanisms regarding other awards, including those issued in

1 Iran- Us Claims Tribunal, Decision N0. 12 Case A-1

2 Maroosi, *Report on the Awards of the Iran-United States Claims Tribunal* (2012) 16-25.

3 Ibid, 27-36.

4 Other cases related to the restoration of the security account have also been raised, which are less relevant to the subject of the present writing; however, a brief mention of them is worthy. Notably, in Case A/28, the United States contested Iran's failure to restore the balance of the security account, thereby alleging a breach of Iran's obligations under the Algiers Accords. The Tribunal, after deliberation, determined that Iran was obligated to restore the balance of the security account in accordance with paragraph 7 of the General Declaration. Iran, arguing that the current balance of the security account was sufficient to cover the payments of the issued awards, did not take further action on this matter. However, ultimately, after five years, in 2005, Iran took steps to restore the balance of the security account.

5 Naser Ali Mansourian, '*The Iran-U.S. Claims Tribunal: A Manifestation of the Confrontation Between Two Civilizations in the Legal Sphere*' (2001) 150.

6 Chiara Giorgetti, *The rules, practice, and jurisprudence of international courts and tribunals*, (2012) 552-553.

7 Ibid, 555, referring to *Islamic Republic of Iran v. United states of America*, Award No. 586-A27.



favor of Iran. The parties have relied on the general statements in paragraph 1 of Article 4 of the Dispute Resolution Declaration regarding the definitiveness and binding nature of the Tribunal's decisions, and paragraph 3 of the same article, stating that the enforcement of awards will be governed by the laws of each country. The Iranian government has raised claims of violations of these provisions by the U.S. government and the absence of appropriate practices in the enforcement of awards. Notable instances of Iran's objections include the non-enforcement of awards in the *Gould and Avco* cases.¹

In the *Gould* case,² the Tribunal ordered the United States to pay 3,640,247 dollars to the Iranian Ministry of Defense. Additionally, the ruling mandated *Gould Marketing* to deliver equipment owned by the Iranian Ministry of Defense to the relevant authority.³ Following three years of non-voluntary compliance by the U.S. with the ruling, Iran sought enforcement of the award from the Federal District Court for the Central District of California. The court, asserting its jurisdiction based on the criteria established in the New York Convention, surprisingly upheld the damages specified in the ruling but modified the obligation of *Gould* to deliver the equipment. The court found this obligation to be inconsistent with the export restrictions in the United States, stipulating that Iran could refile its request once the restrictions were lifted.⁴ The ruling was appealed by Iran, arguing that it should be upheld in its entirety "as is" without modifications. As anticipated, the Ninth Circuit Court of Appeals overturned the part of the ruling exempting *Gould* from delivering equipment to Iran and remanded the case for reconsideration by the lower court.⁵

After these proceedings and the re-submission of the case to the Federal Court, *Iran* and *Gould* entered into an agreement to fulfill the obligations arising from the award, stipulating that a specified amount would be paid by *Gould* to Iran and that the disputed equipment would be delivered to a warehouse located in the United States.⁶ Despite the fulfillment of these obligations, the actions of the U.S. Federal Court in modifying and amending the Tribunal's ruling have been the subject of Iranian objections, raising doubts about the definitiveness and binding nature of the Tribunal's awards.⁷

In the *Avco* case,⁸ the issue of non-enforcement of the award issued in favor of Iran was raised differently. A brief overview of the case is as follows: the American company *Avco* claims payments from the Iranian Aerospace Industries Company based on unpaid invoices. In this case, the claimant provided a certified copy of the invoices and did not submit the originals. The Iranian respondent also filed counterclaims against *Avco*. Ultimately, the Tribunal ordered the American company to pay 3,781,200 dollars, including interest, to Iran. This ruling was not voluntarily executed, prompting Iran to request enforcement from the Federal Court in

1 IUSCT, Award No. 586-A27-FT Case A/27. paras 12-17.

2 IUSCT, Decision 2-49/50_136 Case 49, 50.

3 Maroosi, *Report on the Awards of the Iran-United States Claims Tribunal* (2014) 148-161.

4 Central District of California, *Ministry of Defense v. Gould, Inc.* (1978).

5 United States Court of Appeals, Ninth Circuit, *Ministry of Defense v. Gould, Inc.* (1992).

6 Retrieved from <https://jusmundi.com/fr/document/decision/en-the-islamic-republic-of-iran-v-the-united-states-of-america-award-award-no-568-a27-ft-wednesday-6th-may-1998>, September 20, 24.

7 Although not explicitly stated in the ruling, it appears that the U.S. court, referencing the non-enforcement provisions of the New York Convention outlined in paragraph 2(b) of Article 5, exempted *Gould* from delivering the equipment. In effect, the court seemed to regard the restrictions governing the export of the equipment covered by the ruling as matters of economic public policy.

8 IUSCT, Award No. 377-261-3 Case 261.



Connecticut in 1991.¹ *Avco* sought to vacate the ruling, arguing that its right to a fair trial had been violated, contending that the Tribunal had noted that *Avco* failed to present the original invoices and that its claim was therefore dismissed; however, it claimed that the Tribunal did not request the submission of the originals, thus denying the claimant a fair trial. Consequently, the court refused to enforce the ruling based on paragraph 1(b) of Article 5 of the New York Convention.²

1.2. Interpretation of the Parties' Obligations Regarding the Enforcement of Awards by the Tribunal

Numerous instances of non-enforcement or delayed and discriminatory enforcement of awards issued in favor of Iran prompted Iran to request an interpretive opinion from the Tribunal regarding the U.S. obligations to enforce these awards, in accordance with paragraph 17 of the General Declaration and paragraph 4 of Article 6 of the Dispute Resolution Declaration. Based on these provisions, the Tribunal is the competent authority for interpreting and enforcing the Algiers Accords and makes decisions upon the request of either party in such matters. Accordingly, Iran requested that the Tribunal not only acknowledge the U.S. violations of its obligations but also interpret how the U.S. is obligated to enforce awards issued in favor of Iran. The primary aim of Iran in this action was to clarify whether a mechanism similar to the Security Account could be envisioned for awards issued in its favor.³

The obligations of the United States regarding the enforcement of awards issued in favor of Iran have been discussed in various cases, notably in Cases *A/21* and *A/27*. Due to the focus of Case *A/27* on the enforcement of the New York Convention, it is addressed in the subsequent section. Here, we outline the enforcement mechanism of the Tribunal as discussed in Case *A/21*,⁴ including the arguments of both parties and the Tribunal's final opinion.

1.2.1. Iran's Arguments

Iran's argument that the United States has violated its obligations under the Algiers Accords mainly relies on the refusal of U.S. courts to enforce awards issued in the *Gould* case. Citing the explicit phrases in paragraph 1 of Article 4 of the Dispute Resolution Declaration regarding the "final and binding" nature of the awards, Iran asserts that the United States is obligated to establish a mechanism to guarantee the enforcement of all awards issued by the Tribunal. Thus, the U.S. commitment in this regard encompasses awards against it and its affiliated entities. This interpretation, considering the parties' intent to conclude all legal actions and ongoing claims in other forums in favor of arbitration as provided in the Algiers Accords, seems more logical. Iran argues that this clause indicates that the Tribunal is the sole governing authority for the disputes between the parties, and once it issues a ruling, recourse to another authority for enforcement becomes irrelevant.⁵

Another aspect of Iran's reasoning stems from principles of *Customary International Law*. The rationale for applying these principles is that the Tribunal is an international court

¹ United States District Court of Connecticut, *Iran Aircraft Industries v. Avco Corp.*

² Maroosi, *Report on the Awards of the Iran-United States Claims Tribunal* (2011) 97-98.

³ John Collier, *The Settlement of Disputes in International Law* (1999) 83.

⁴ IUSCT, Award No. A-21_62 Case *A/21*.

⁵ Maroosi, *Report on the Awards of the Iran-United States Claims Tribunal* (2012) 659.

established under a treaty-like agreement and addresses disputes between states. Consequently, treaties create a “reciprocal system of commitments” between the parties. Therefore, under this principle, if awards issued by the Tribunal are not enforced by U.S. legal entities, a mechanism similar to the Security Account should also be envisioned for awards in favor of Iran. Overall, Iran considers the prevailing practices of U.S. courts in enforcing the Tribunal’s awards as ineffective and inconsistent with the provisions of the Algiers Accords, demanding the establishment of a mechanism similar to the Security Account or legislative action by the U.S. to recognize the Tribunal’s awards based on “full faith and credit,”¹ akin to awards issued under ICSID.²

1.2.2. U.S. Arguments

In response, the United States presents arguments contrary to those of Iran, initially questioning the Tribunal’s jurisdiction to decide on the dispute. It claims that the matter at hand does not pertain to interpretation; the absence of a specific mechanism in the Tribunal’s regulations indicates that the parties did not foresee such an issue, making it non-justiciable. Even if the Tribunal is deemed competent to address the substance of the matter, the U.S. merely notes that the finality and binding nature of the Tribunal’s awards, along with the inability to appeal or revisit the issued rulings, do not imply that the U.S. government is responsible for enforcing awards that impose obligations on American companies and commercial entities.

1.2.3. The Tribunal’s Opinion

The Tribunal, accepting its jurisdiction under paragraph 4 of Article 6 of the Dispute Resolution Declaration, acknowledged Iran’s request and stated that the matter at hand primarily involves the interpretation and scope of application of the provisions of the Accords. It confirmed that the claim has been appropriately presented.

In deciding the matter, the Tribunal emphasized the treaty nature of the Algiers Accords and adopted a method of interpretation based on paragraph 1 of Article 31 of the Vienna Convention on the Law of Treaties. According to this provision, the Tribunal considers the elements of good faith and the ordinary meaning of terms, taking into account the context and purpose of their use.

Using this interpretative method, the Tribunal found no basis for imposing on the United States a different enforcement mechanism for the awards issued by the Tribunal or for requiring the fulfillment of obligations arising from those awards unless such actions are undertaken voluntarily. The ordinary meaning of the terms “final and binding,” when used in arbitration-related documents, implies that if these awards are not voluntarily executed, the award creditor must approach the competent authorities to seek enforcement. Thus, these terms do not suggest that arbitral awards can be executed without any subsequent action.

Iran’s argument regarding the existence of mutual obligations between the parties was also rejected by the Tribunal, as the application of *customary international law* principles cannot create obligations for one party of a treaty that contradicts the explicit terms of the document.

¹ In U.S. law, states are required to recognize and enforce awards issued by other states as well as foreign awards.

² Awards issued by ICSID are enforced in member countries based on the principle of “full faith and credit.” Generally, these awards are not subject to appeal, with only specific conditions outlined in Article 51 of the Washington Convention providing exceptions to this rule.



Moreover, the provisions of the Algiers Accords only recognize the Security Account mechanism for awards issued against Iran and contain explicit regulations for the enforcement of awards according to the laws of the place of enforcement, closing off any contrary conclusions.

The Tribunal further stated that the importance of the obligations imposed by the conclusion of an international treaty on the parties should not be overlooked. These obligations include the good faith and effective implementation of the treaty. The Algiers Accords impose the requirement that the parties implement its provisions within their national systems, considering the treaty's objectives, which include resolving disputes through the establishment of a permanent arbitration tribunal and issuing binding awards. Consequently, the Tribunal's awards should be recognized as valid and enforceable within national systems. The manner of enforcing these awards, aside from the regulations concerning the Security Account, is not specified in the Algiers Accords and depends on the regulations of the national systems of each party.

Ultimately, the Tribunal concluded that as long as there is a valid practice in enforcing arbitral awards within the legal systems of the parties, they cannot be held liable to establish a special mechanism for enforcing these awards. In the absence of any such established mechanism for recognizing arbitral awards, a final and binding practice must be established for recognizing the Tribunal's awards in a manner that does not create any discrimination in the enforcement of the discussed awards. Regarding Iran's request, there is no evidence indicating a lack of enforcement practice for arbitral awards in the United States. On the contrary, the Iranian government has not sufficiently utilized the legal avenues available in the U.S. For instance, in the *Gould* case, the enforcement of the award concluded with a settlement agreement between the parties, rendering the issue of the lack of an enforcement mechanism in the U.S. irrelevant in that case.

Based on the aforementioned reasons, the Tribunal dismissed all arguments presented by Iran and did not hold the U.S. government responsible for enforcing awards issued against its affiliated institutions and companies.¹

2. Examination of the Feasibility of Implementing the New York Convention

Now that it has been established that the Algiers Accords contain a general provision in Article 4 of the Dispute Resolution Declaration regarding the enforcement of awards, and that the Tribunal's practice indicates that the national legal system of the place of enforcement governs the execution of the award, it is necessary to explore the feasibility of enforcing awards under the New York Convention.² This Convention is one of the most successful agreements between states, recognized by 172 countries.³

As previously mentioned, the United States implements the awards issued by the Tribunal according to the recognition and enforcement framework of the New York Convention. In Case A/21, Iran presented arguments regarding the incompatibility of the Convention's provisions with the finality and binding nature of awards mentioned in Article 4 of the Dispute Resolution

¹ Maroosi, *Report on the Awards of the Iran-United States Claims Tribunal* (2012) 657-667.

² United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

³ Retrieved from <https://www.newyorkconvention.org/contracting-states>, last accessed on September 20, 2024.



Declaration. In this section, we first examine the arguments of both parties and the Tribunal's opinion regarding the applicability of the New York Convention to the enforcement of issued awards. Then, we briefly assess whether, regardless of the Tribunal's ruling and the arguments of the parties, the New York Convention can be deemed applicable to awards from a body closely related to *public international law*.

2.1. Examination of the Applicability of the New York Convention Based on Case A/27

Case A/27¹ arose following the U.S. court's refusal to enforce the award issued in the *Avco* case. As explained, the court's refusal was based on grounds outlined in Article 5 of the New York Convention.² The case under consideration was filed after Case A/21, with Iran seeking to demonstrate that the New York Convention does not provide an adequate framework for enforcing Tribunal awards. Therefore, the absence of a suitable domestic system referenced by the Tribunal in Case A/21 necessitates that the U.S. establish a specific mechanism commensurate with the final and binding nature of the Tribunal's awards. Accordingly, Iran has reiterated its claim of U.S. violations of its obligations regarding the enforcement of awards. Below, we review the arguments presented and the Tribunal's ruling in this case.

2.1.1. Iran's Arguments

A significant portion of Iran's arguments in this case relies on paragraph 15 of the Tribunal's ruling in Case A/21, where it stated, "If an enforcement mechanism does not exist within the national system of the parties, or if recourse to it ultimately leads to non-enforcement of the Tribunal's rulings or unreasonable delay in their execution, this constitutes a violation of the Algiers Accords." The *Avco* case exemplifies the realization of the Tribunal's opinion in ruling A/21, indicating that the U.S. has breached its obligations under the Algiers Accords.

Iran's related argument regarding the applicability of the New York Convention posits that the Tribunal and its awards possess international characteristics, as it was established under the Algiers Accords, which have the nature of a treaty, and adjudicates disputes between states. Consequently, the New York Convention cannot apply to the Tribunal's awards, as the Convention pertains to foreign arbitral awards, not international ones. The international character of the Tribunal conflicts with the provisions of Article 5 of the Convention, which outlines grounds for the non-enforcement of arbitral awards.

Iran further asserts that the international nature of the Tribunal implies the supremacy of customary international law over it, under which awards issued by an international body cannot be subject to review or non-enforcement by domestic courts. The only permissible aspect of examining international awards is their authenticity. Thus, the New York Convention is inadequate both in terms of its applicable scope over foreign awards and the existence of Article 5, which recognizes grounds for non-enforcement. Iran argues that the non-enforcement of the aforementioned awards under the Convention should be regarded as a violation of U.S. obligations under the Algiers Accords.

¹ IUSCT, Award No. 586-A27-FT Case A/27.

² Article 5 of the New York Convention enumerates the grounds for refusing the recognition and enforcement of an arbitral award. These grounds are as follows: lack of capacity of the parties, invalidity of the arbitration agreement, failure to comply with due process, issuance of an award on matters not subject to arbitration, and contravention of public policy.



2.1.2. U.S. Arguments

In response to the aforementioned points, the United States contends that under the Algiers Accords, its obligations regarding the enforcement of awards are summarized in three areas: 1) the existence of a mechanism for enforcing arbitral awards within its legal framework; 2) ensuring Iran's access to that mechanism; and 3) the mechanism must be applied without discrimination concerning awards issued by the Tribunal. The U.S. asserts that the framework governing the enforcement of awards within its legal system, namely the New York Convention, effectively fulfills these obligations.

The U.S. rejects the interpretation of the Tribunal's ruling in Case A/21, asserting that a correct understanding of paragraph 15 indicates that if the absence of an enforcement mechanism leads to non-enforcement or delays in executing awards, this constitutes a violation of the Algiers Accords. This does not consider a scenario where the governing system recognizes a specific award as unenforceable based on existing exceptions.

Regarding the legal nature of the Tribunal, the U.S. argues that it is a hybrid entity. While established by the Algiers Accords and deriving from public international law, it also has jurisdiction over disputes that are fundamentally commercial and pertain to private individuals. The reference to commercial law principles as applicable rules for disputes, as noted in Article 5 of the Dispute Resolution Declaration, supports this claim. Therefore, the Tribunal's nature should not impede the application of the New York Convention.

Furthermore, the U.S. contends that the New York Convention serves as the primary framework for recognizing arbitral awards acknowledged by the international community, and Iran cannot assert that it does not apply to awards issued by the Tribunal.

2.1.3. The Tribunal's Opinion

The most significant aspect of the Tribunal's ruling in Case A/27 is its elucidation of the legal nature of this entity. The Tribunal states that, as agreed by the parties, this authority was established through an international agreement between Iran and the United States. Both countries have designated the Tribunal as competent to adjudicate disputes between the two states and claims by nationals of either contracting party against the other state. Consequently, the international nature of the Tribunal is obvious and indisputable, and the involvement of individuals and private legal entities does not contradict this international character. Based on this understanding, final rulings issued by international tribunals are considered "enforceable."

Regarding the applicability of the New York Convention and Iran's claims about its incompatibility with the final and binding nature of the awards issued, as well as the reference to the non-enforcement of the *Avco* award, the Tribunal states in the first part of its opinion that, regardless of the appropriateness of the Convention as the enforcement system chosen by the U.S., the court's decision regarding the non-enforcement of the *Avco* ruling contains significant errors. The court based its refusal on the premise that the failure to provide original invoices was the ground for rejecting the American claims and issuing a ruling in favor of Iran. It considered this matter to fall under Article 5 of the New York Convention and asserted that the U.S. was misled regarding the necessity of providing the original invoices and was not afforded a fair trial.

However, a careful examination of the *Avco* ruling reveals that the basis for holding the U.S. accountable was not the failure to present original invoices, but rather that the Tribunal believed the American claimant was not entitled to the requested amount. In other words, the existence of the debt was questioned by the Tribunal, not the method of presenting the invoices.

The court's significant error in refusing to enforce the *Avco* ruling results in U.S. liability regarding its failure to comply with the provisions of the Algiers Accords. The well-established *principle of state responsibility* holds that any error stemming from the judiciary of a country is attributed to that country at the international level, which reinforces this conclusion. Therefore, the Tribunal ultimately obligates the U.S. to pay the *Avco* award and the interest on that amount.

Regarding the suitability of the New York Convention as the enforcement mechanism chosen by the U.S., the Tribunal acknowledges that the exceptions outlined in Article 5 of the Convention appear to conflict with states' obligations under the Algiers Accords. However, it notes that the Iranian claimant in the *Avco* case did not object to the way the Tribunal interpreted its ruling and even waived certain deadlines for objections. Thus, the incompatibility of the New York Convention with the nature of the awards issued by the Tribunal remains unproven, and this issue cannot be addressed at this stage.

2.2. Applicability of the New York Convention Conditions to Tribunal Awards

The New York Convention was initially introduced as the governing system for the recognition and enforcement of foreign arbitral awards. Its increasing acceptance in international trade law and regarding the uniform recognition and enforcement of arbitral awards raises the question of whether it can also apply to awards of a mixed nature. Despite the varying opinions on this matter, it seems reasonable to apply the Convention to awards issued by bodies with dual characteristics, such as the Tribunal.

To be recognized and enforced under this Convention, a foreign arbitral award must meet the following conditions: there must be a valid arbitration agreement between the parties, there should be no grounds for non-enforcement as specified in Article 5 of the Convention (i.e., parties must have the capacity to arbitrate, fair proceedings must be observed, the award must not conflict with the public policy of the enforcement state, and it must not pertain to matters that are non-arbitrable).

Among these conditions, the existence of an arbitration agreement between the parties to the Algiers Accords may be contentious, as it differs from the typical arbitration agreements reflected in commercial contracts. The disagreement regarding the foreign nature of the awards in question and the exceptions in Article 5 was illustrated in the examination of Case *A/27*. Below, we attempt to address these challenges and demonstrate the applicability of the New York Convention to the Tribunal's awards.

As stated above, the basis for the Tribunal's jurisdiction over Iran-U.S. claims is the Algiers Accords. This situation—where the Tribunal's jurisdiction is derived from a declaration that is not a conventional contractual agreement between private parties but rather a treaty between states—raises questions about whether the Algiers Accords constitutes an arbitration agreement in the sense of Article 2 of the New York Convention. The specific form of consent expressed in the Algiers Accords has somewhat weakened the contractual basis of arbitration, though it



has not been completely nullified.¹ Moreover, the broad interpretation of consent by courts reinforces the parties' intention to resolve ongoing disputes in courts and initiate arbitration, as explicitly stated in the Algiers Declaration, thus fulfilling the definition of an arbitration agreement under the New York Convention.² In essence, consent is the only substantive element of the arbitration agreement that is validly expressed in the Algiers Accords, while the procedural requirement of a written agreement also exists.

Regarding the objection of the foreign nature of the awards, it is noteworthy that various sources have affirmed the applicability of the Convention to awards from permanent arbitral tribunals or ad hoc arbitral tribunals with dual characteristics.³ The broad wording of Article 1 of the Convention indicates that "foreign" refers to the recognition and enforcement of awards in a location other than where the award was issued. This definition encompasses awards from international tribunals and those issued by the IUSCT since its Seat is located in the Netherlands. Furthermore, awards from international courts only require a specific mechanism and do not fall under the New York Convention if they involve political situations, such as border determinations or human rights violations.⁴ In the case of the IUSCT, this issue is irrelevant, as the involvement of state and governmental institutions as one of the parties in disputes does not preclude the commercial nature of the conflict or remove political issues from its scope.⁵

Finally, regarding the grounds for non-enforcement listed in Article 5 of the Convention, two important points must be noted. First, given the Convention's policy of supporting the enforcement of arbitral awards, the grounds in this article should be interpreted narrowly. Generally, all provisions of the Convention are interpreted in a manner that upholds the Convention and facilitates the enforcement of arbitral awards. For example, regarding arbitration agreements, the Convention presumes the validity and enforceability of such agreements. This presumption aligns with the Convention's goal of supporting the recognition and enforcement of arbitral awards. The drafting context of Article 2, which first invites member states to recognize arbitration agreements and subsequently mentions the grounds for their invalidation, also suggests a presumption of the validity of arbitration agreements.⁶

The second point is clarified by a closer examination of the *Gould* and *Avco* cases. In the *Gould* case, the U.S. court initially stated that the Iranian Ministry of Defense lacked legal standing to bring a claim in U.S. courts because the Iranian government had not yet been recognized. However, the U.S. Department of State, in correspondence with the court, indicated that the U.S. government had an interest in the case and could overlook the aforementioned issue, allowing the proceedings to continue. It seems that the U.S. government, as an interested party and one of the signatories of the Algiers Accords, could choose to waive the application

1 Gaillard & Savage, *International Commercial Arbitration*, Kluwer Law International (1999) 34.

2 UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, UNCITRAL (2016) 43-44.

3 Van den Berg, *The New York Convention of 1958: An Overview* (2020) 44; UNCITRAL Secretariat, *Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958* (2016) 28.

4 Moses, *The Principles and Practice of International Commercial Arbitration* (2017) 273.

5 Gaillard & Savage, *International Commercial Arbitration* (1999) 42.

6 Bahmani & Solhi, *Challenges in the Recognition and Enforcement of Arbitral Awards within the Framework of Article 2 of the 1958 New York Convention* (2021) 121.



of Article 5 of the New York Convention regarding the Tribunal's awards, thereby eliminating the basis for revisiting the issued ruling by the court.

Conclusion

The Algiers Accords is an international document established between the governments of *Iran* and *the United States*. A superficial examination of the relevant provisions in this document suggests an inequality in the obligations imposed on the parties, with awards issued in favor of Iran frequently facing non-enforcement by U.S. courts.

The arguments analyzed regarding the interpretation of the prevailing practices for recognizing and enforcing awards in favor of Iran indicate that the absence of a specific mechanism for the enforcement of these awards does not imply that enforcement is impossible. Iran can utilize the potential of the New York Convention to enforce the awards issued against the U.S. Recognizing the applicability of the New York Convention aligns better with the actual practices of U.S. courts, which are parties to the treaty, and contributes to the desired coherence in the recognition and enforcement of foreign arbitral awards.

Thus, the hypothesis posited in response to the primary research question regarding the supremacy of the New York Convention over the Tribunal's awards is confirmed. Regarding the compatibility of the Convention's framework with the hybrid nature of the Tribunal, as evidenced in the analyses of the *Gould* and *Avco* cases, the non-enforcement of these awards was not due to the inadequacy of the New York Convention but rather due to other procedural issues. Furthermore, any unjustified non-enforcement of awards can be addressed by the Tribunal, which can issue rulings for compensation.

In conclusion, the Algiers Accords were drafted with the aim of providing an effective solution to the complex issues between the parties, which is why the principle of sovereign equality of states is less emphasized in the document. The existing imbalance in certain provisions, such as the Security Account, should be interpreted as a compromise aimed at resolving disputes.



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