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Res Judicata in the Precedent of the Iran-United States Claims Tribunal

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ABSTRACT

The principle of res judicata serves as a fundamental pillar of adjudication within legal frameworks, prohibiting a judicial body from re-adjudicating a dispute that has already been resolved and for which a judicial decision has been rendered. This paper explores the jurisprudence of the Iran-United States Claims Tribunal, critically analyzing the Tribunal's reasoning and approach to res judicata. A descriptive-analytical analysis, alongside a meticulous examination of the Tribunal's rulings, reveal inconsistencies in its application of res judicata. At times, the Tribunal has raised the threshold for its application compared to similar courts and Tribunals, whereas at other instances, it has broadened its scope. Over time, the Tribunal has not remained consistent with its prior findings regarding res judicata, occasionally excluding certain disputes from its ambit based on insufficiently robust arguments. Furthermore, when applying this principle, the Tribunal has expanded its scope and asserted authority over all aspects of the ruling articulated in the operative part of the judgment. Consequently, a notable inconsistency exists within the Tribunal's rulings regarding the application of pertaining to the principle of res judicata.

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Introduction

The issue of *res judicata*, or the finality of judgments, constitutes a fundamental component of legal proceedings and has consistently held significant importance. The rationale behind this assertion lies in its definition. Undoubtedly, one of the primary objectives of judicial proceedings, if not the most critical one, is the attainment of justice through the resolution of existing disputes. A dispute is resolved in a manner that serves justice only when it aligns entirely with the rights of the parties involved and can effectively enforce the rights of each party to the dispute. Moreover, this is the foremost duty of the dispute resolution authority. Achieving this requires thorough examination, consideration of potential errors in the process, and efforts to rectify these errors. Ultimately, however, there must come a time when judicial examination and oversight of judges' actions conclude, the dispute must end, and the final judgment must be rendered.[1] The concept of res judicata arises when "a judicial decision with unique characteristics, rendered by a tribunal or court competent to adjudicate the matter in dispute, definitively resolves the contested issues; thus, (except in the case of appeals and similar exceptions) the matter cannot be revisited by the same parties or their representatives."[2]

The Iran-United States Claims Tribunal (IUSCT, the Tribunal), if not the most significant, represents one of the most important arbitration institutions in which Iran has been involved. It stands among the foremost international arbitration bodies in the world, distinguished by the sheer volume of disputes it has adjudicated, its duration of existence, and its exclusive jurisdiction over certain disputes between the Government of Iran and the United States.

The issue of res judicata has been approached differently by various judicial bodies. Although its foundational principles are nearly uniform across jurisdictions—generally assessing three elements: *identity of parties*,[3] *identity of subject matter*,[4] and *identity of cause of action*[5]—different bodies typically present their perspectives on this principle, occasionally expanding or limiting its application.[6] The Tribunal is no exception, having articulated and applied considerations regarding this principle in certain cases.

1 Nasser Katouzian, *The Res Judicata Effect in Civil Litigation* (11th edn, Mizan Legal Foundation 2020).

2 Peter R Barnett, *Res Judicata, Estoppel, and Foreign Judgments: The Preclusive Effects of Foreign Judgments in Private International Law* (Oxford University Press 2001) para 1.12.

3 Persona

4 Petitum

5 Causa Petendi

6 Audrey Sheppard, 'The Scope and Res Judicata Effect of Arbitral Awards' in *Arbitral Procedure at the Dawn of the New Millennium* (Reports

While nearly all disputes within the Tribunal's jurisdiction have been resolved, with judgments issued, some of the Tribunal's most significant cases, notably the case known as *B/61*, remain ongoing, and no final ruling has been rendered. Furthermore, one of the most contentious judgments issued by the Tribunal was a partial ruling related to this case, where the issue of res judicata constituted the foundation of the majority's reasoning. This ruling inflicted substantial harm on Iran's claims and interests, which Iran estimated at $2.2 billion. It appears that a lack of proper understanding regarding the application and scope of res judicata by the majority of arbitrators was a contributing factor. The issue of res judicata, both in theory and practice, necessitates considerable sensitivity and precision, as it can completely deprive a party of the right to bring a claim and, at times, not only precludes the re-filing of a claim but also extinguishes related disputes. Thus, understanding res judicata and being aware of its application by judicial bodies is critically important.

This paper examines the concept of res judicata in the context of the IUSCT, an international arbitration body with specific jurisdiction over certain disputes between the Iranian and U.S. governments and their nationals, stemming from events following the fall of the Pahlavi regime in 1979 and the establishment of the provisional government of the Islamic Republic of Iran. The study also addresses the most significant issues concerning res judicata in the Tribunal's jurisprudence and strives to analyze the Tribunal's approach to this principle. Consequently, it focuses on two crucial cases associated with this topic, which involve significant instances where res judicata has been prominently featured, with the governments of Iran and the United States as the parties to the disputes.

Finally, it is essential to note that the terms "rule" or "principle" concerning "res judicata" might be used interchangeably. This interchange is because, firstly, the discussion on this matter is not pertinent to the subject of this writing, and secondly, to maintain fidelity and accurately convey what has been stated in the Tribunal's documents, this paper refrains from favoring one term over the other and considers both as interchangeable concepts.

1. Res Judicata in the Rules Governing the IUSCT

The Tribunal, now in its fifth decade of operation, has addressed the issue of res judicata in various cases, examining it in light of existing realities and its own perspectives. The frequent citations by the parties involved (Iran and the United States in cases where both governments were litigants) and the detailed examination of individual cases, along with the issuance of specific rulings, have significantly heightened the importance of res judicata. The initial section briefly outlines the foundations and rationale for the applicability of res judicata within the Tribunal.

1.1. Res Judicata in International Law

According to some international law scholars,[1] res judicata is recognized as a general principle of law within the international legal system. By accepting this premise, one can identify the

of the International Colloquium of CEPANI, Bruylant 2005) 270.

1 Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Stevens & Sons Limited: The London Institute of World Affairs 1953) 347; PCIJ, *Interpretation of Judgments Nos 7 & 8 (The Chorzow Factory) (Germany v Poland) Judgment* (16 December 1927) PCIJ Rep Series A No 11, Dissenting Opinion of Judge Anzilotti.

existence of res judicata in international law as a general legal principle, as well as within the framework of the Permanent Court of International Justice (PCIJ) Statute,[1] specifically in Article 38(3), and likewise in the Statute of the International Court of Justice (ICJ).[2] In a statement by Lord Phillimore during the drafting of the PCIJ Statute,[3] it was noted: "That the general principles […] were these which were accepted by all nations in *foro domentico* such as certain principles of procedure, the principle of good faith, and the principle of *res judicata*, etc. "[4] Judge Anzilotti, in his separate opinion in the *Chorzow Factory* case, also recognized res judicata as a general legal principle accepted by civilized nations, as articulated in Article 38(3) of the Statute,[5] and acknowledged in Article 59, with no dissenting opinion expressed in international law.[6]

International courts and investment arbitration institutions generally adopt a similar approach regarding res judicata. Many of these courts rely on the opinions articulated in the statutes and jurisprudence of the ICJ or its predecessor, the PCIJ, referencing the practices of international dispute resolution bodies and commonly acknowledging res judicata as a principle in international law.[7]

Thus, res judicata is a well-established and clearly recognized concept in public international law.[8] This claim implies that courts and judicial bodies are capable of applying res judicata, even in the absence of explicit articulation in their documents, and this rule will not be applied only in cases where there is a clear intent not to enforce it;[9] the Tribunal is not exempt from thisprinciple.[10]

1.2. Foundational Documents of the IUSCT and Its Procedural Rules

In addition to the aforementioned discussion, the constituent and procedural documents of the Tribunal also provide grounds for the application of res judicata to the issued rulings. According to the Tribunal's procedural rules, a ruling issued by the Tribunal is final and becomes immediately enforceable upon issuance.[11] The finality of the ruling implies the inclusion of res judicata and the absence of the possibility for further review. Moreover, with respect to the Tribunal's procedural rules, the Tribunal considers supplementary rulings only concerning those claims that "have been presented during the arbitration but were not mentioned in the ruling," and the issuance of a supplementary ruling is contingent upon the Tribunal's determination of the validity of the said claim. The occurrence of res judicata can also be inferred from the contrary meaning of this provision; if a claim has not been presented during the arbitration, it cannot be heard or appended to the ruling, and therefore, the ruling cannot be altered. Thus, since the ruling is final, assuming

1 League of Nations, *Statute of the Permanent Court of International Justice* (16 December 1920), art. 38(3).
2 United Nations, *Statute of the International Court of Justice* (18 April 1946), Art. 38(1)(c).
3 Frits Kalshoven, Pieter Jan Kuyper, and Johan G. Lammers, 'International Law—General' in *Recueil des Cours* (1977) Vol IV (Tome 157 of the Collection); Riad Daoudi, *La Représentation en Droit International Public* (Librairie Générale de Droit et de Jurisprudence 1980) 405-484.
4
5 PCIJ Statute, Art 38: "The Court shall apply... 3. The general principles of law recognized by civilized nations…".
6 PCIJ, *Interpretation of Judgments No 7 & 8 (The Chorzow Factory) (Germany v Poland)* (Judgment of 16 December 1927) PCIJ Rep Series A No 11, Dissenting Opinion of Judge Anzilotti, p 27.
7 German Derbushev, *Res Judicata and Arbitral Awards* (LL.M Thesis, Central European University 2019) 60.
8 Yuval Shany, *The Competing Jurisdictions of International Courts and Tribunals* (Oxford University Press 2004) 254.
9 Ibid.
10 Mohsen Mohebi, 'The Legal Nature of the Iran-United States Claims Tribunal from the Perspective of International Law' (1994) 13 *International Legal Journal* 95.
11 IUSCT, Rules of Tribunal, Art. 32.

the presence of additional evidence, the elements of res judicata—namely, the identity of the cause, identity of the subject matter, and identity of the parties—render the ruling subject to res judicata, and it cannot be revisited, reexamined, or otherwise altered. Although the practice of the Tribunal, as will be discussed, permits reconsideration in certain limited and exceptional cases, if a claim does not fall under the category of "omission" as defined in Article 37 of the Tribunal's procedural rules, it cannot alter the issued ruling, which remains final. Consequently, the Tribunal has applied res judicata in its adjudications.

2. Res Judicata in the Jurisprudence of the IUSCT

It has been observed that the Tribunal, in light of its constituent documents and as an international arbitration body established by subjects of international law, has consistently applied the principle of res judicata in its jurisprudence. Therefore, the following discussion will focus on the most significant cases and opinions regarding res judicata, as well as how this principle has been applied by the Tribunal. Two cases, which encompass several files and rulings, will be examined in this section, as they represent the foundational approach of the Tribunal concerning the issue of res judicata.

2.1. Increased Threshold for the Application of Res Judicata in the Security Account Cases

One of the prominent cases presented to the Tribunal in this context is the *security account* case, which includes cases *A/28* and *A/33*. In October 1993, the claimants, the United States and the Federal Reserve Bank of New York, filed a case against the respondents, the Islamic Republic of Iran and the Central Bank of Iran, classified under case *A/28*. The claim was based on the alleged breach of obligations by the respondents regarding the restoration of the security account balance, established under Paragraph 7 of the Algiers Accords[1] and technical agreements[2] to ensure payment of claims against Iran. The claimants asserted that the respondents had violated their

1 In paragraph 7 of the General Declaration, which forms the basis of the current claim, it states: "As funds are received by the Central Bank pursuant to Paragraph 6 above, the Algerian Central Bank shall direct the Central Bank to (1) transfer one- half of each such receipt to Iran and (2) place the other half in a special interest-bearing security account in the Central Bank, until the balance in the security account has reached the level of $1 billion. After the $1 billion balance has been achieved, the Algerian Central Bank shall direct all funds received pursuant to Paragraph 6 to be transferred to Iran. All funds in the security account are to be used for the sole purpose of securing the payment of, and paying, claims against Iran in accordance with the claims settlement agreement. Whenever the Central Bank shall thereafter notify Iran that the balance in the security account has fallen below $500 million, Iran shall promptly make new deposits sufficient to maintain a minimum balance of $500 million in the account. The account shall be so maintained until the President of the Arbitral Tribunal established pursuant to the claims settlement agreement has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied in accordance with the claims settlement agreement, at which point any amount remaining in the security account shall be transferred to Iran."

2 Regulations relevant to this matter were also incorporated within the technical agreement, directly pertaining to this case. These regulations include the provision that whenever the balance of Account 'B' falls below 500 million US dollars, the custodian is required to notify the other parties to the agreement. Following such notification, the Central Bank of Iran must promptly deposit sufficient funds to restore the minimum balance of Account 'B' to 500 million US dollars.

Additionally, the agreement stipulates that any dispute arising from its provisions that cannot be resolved amicably may be referred by any party to the Tribunal. However, if the custodian itself is both the defendant and the claimant, the matter must be exclusively brought before the competent judicial authority in Amsterdam. Furthermore, it is specified that neither the custody-representative nor the custodian is bound or obligated by any Tribunal decision that conflicts with their claims and privileges as outlined in the agreement. In relation to disputes concerning the provisions of the agreement and other matters of its implementation—where such disputes arise solely from cases initiated by one of the parties and before a single court or the Tribunal—the parties explicitly waive any immunity they may have or any right to invoke such immunity in civil proceedings. Moreover, the disputing parties agree to abide by the judgment and ruling of the Dutch court or, in cases not involving the custodian itself, to accept the decision of the Tribunal.

obligations by failing to maintain the security account balance at a minimum of $500 million. In their final pleadings, the claimants requested that the Tribunal order the respondents to restore the security account to the specified amount and maintain it at that level until all judgments against Iran were satisfied.[1] Additionally, the claimants sought permission from the Tribunal to execute all judgments against them in favor of Iran, by depositing the amounts of those judgments into the security account, should the respondents fail to restore the balance.[2]

Iran rejected these claims, denying any responsibility and asserting that the current balance of the security account was sufficient to satisfy all future judgments against Iran, thus it did not consider itself obligated to restore the account to $500 million.[3]

In its ruling, the Tribunal noted that the balance of the security account had repeatedly fallen below $500 million and that the respondents had restored the balance over several years. Furthermore, after the payment of several judgments amounting to significant sums on November 5, 1992, and the account balance falling to approximately $254 million, the account had not been restored.[4] After hearing the parties' claims and examining them, the Tribunal ruled against Iran's interpretation of Paragraph 7 of the Accords. The Tribunal expressed its expectation that Iran would fulfill its obligations and evaluated the commitments of the parties under the Accords and agreements as clear and unambiguous (at least in relation to the present dispute).[5] The Tribunal rejected all of Iran's differing interpretations of Paragraph 7 of the Algiers Accords, including the narrow interpretation of treaties,[6] reference to the historical context of the negotiations of Paragraph 7,[7] fundamental changes in circumstances,[8] and the doctrine of approximate performance of obligations.[9]

Consequently, the Tribunal found Iran at fault for failing to restore the security account and deemed this a failure to fulfill the obligations under Paragraph 7 of the Algiers Accords.[10] However, the Tribunal acknowledged the commitment made by Iran's representative during the hearing and considered it valuable, yet expressed uncertainty regarding Iran's decision not to restore the security account balance.[11] On the other hand, the Tribunal stated that although Iran had not correctly interpreted Paragraph 7 and failed to comply with its obligations under it, it could not assume that Iran would continue to neglect its commitments in the future. Therefore, the Tribunal's decision included two final clauses, stipulating that, first, under Paragraph 7 of the Algiers Accords, whenever the balance of the security account fell below $500 million, Iran must immediately restore it until the President of the Tribunal certifies to the Central Bank of Algeria that all judgments against Iran have been executed. Second, it noted that Iran had not fulfilled its obligations since late 1992, and the Tribunal expected Iran to comply with its commitments. Consequently, based on these considerations, the United States' request for an

1 IUSCT, *Award No 130, Case No A28* (19 December 2000), para 1.
2 Ibid.
3 IUSCT, *Award No. 130*, Op. Cit, para. 5.
4 Ibid, Para. 29.
5 Ibid, Para. 67.
6 Ibid, Paras. 67-68.
7 Ibid, Para. 70.
8 Ibid, Para. 74.
9 Ibid, Para. 85.
10 Ibid, Para. 88.
11 Ibid, Para. 90.

order compelling Iran to restore the security account balance and additional claims [given the Tribunal's statement that it could not be certain of the continued violation of Iran's obligations] was also denied.[1]

In September 2004, another case with the same subject matter as *A/28* and a similar request to the previous ruling was filed, classified as *A/32*. The United States reiterated its request for Iran to deposit $500 million into the security account, relying on the final section of the *A/28* ruling, and additionally sought $100,000 for damages incurred in relation to the *A/28* case, as well as a request to suspend proceedings until the account was restored.[2]

Iran, while rejecting the alleged responsibility, considered the claim an unauthorized attempt to reintroduce a matter that the Tribunal had previously decided in case *A/28*, thus invoking the principle of res judicata.[3] The United States asserted that Iran's continuous failure to restore the security account balance to the stipulated amount of $500 million, despite the absence of a certificate from the President of the Tribunal confirming the payment of all judgments against Iran, constituted a repeated and ongoing violation of Article 7 of the General Declaration. This conduct was seen as a clear contradiction to the Tribunal's findings regarding the necessity of restoring the account balance, and the explicit expectations set forth by the Tribunal.[4]

The United States emphasized that there was no reasonable basis for expecting Iran to comply with its obligations under Article 7 unless the Tribunal issued an order directing Iran to do so, which was the reason for bringing this case.[5] In response, Iran raised the issue of res judicata regarding this case, citing its similarity to case *A/28*.[6] Iran argued that the dispositif of the decision in case *A/28*, specifically the last sentence of Section 2 of Paragraph 95,[7] indicated that the Tribunal had rejected the order for restoration and the additional request in that case, rendering the decision final and enforceable. Consequently, the Tribunal was barred from reconsidering the matter and granting the request of the United States in the current case based on res judicata.[8]

Iran reiterated this argument by referencing Paragraph 1 of Article 4 of the Claims Settlement Declaration,[9] emphasizing that there was no jurisdictional basis for such a review in the Algiers Accords. The United States had merely based its new claim in case *A/33* on the existing dispute in case *A/28*.[10]

Furthermore, Iran stated that following the issuance of Award in case *A/28*, the United States filed a request on August 29, 2001, titled "Request of the United States for an Order

1 Ibid, Para. 95 (A) & (B).
2 IUSCT, *Decision No 132-A33-FT, Case No A32* (9 September 2004), para 3.
3 Ibid, Para. 4.
4 Ibid, Para. 10.
5 Ibid, Para. 11.
6 Ibid, Para. 14.
7 IUSCT, *Award No. 130*, Op. Cit, Para. 95: "
In view of the foregoing, THE TRIBUNAL DECIDES AS FOLLOWS:
A. Paragraph 7 of the General Declaration requires that Iran replenish the Security Account promptly whenever it falls below the level of U.S.$500 million until such time as the President of the Tribunal has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied.
B. Iran has been in non-compliance with this obligation since late 1992. The Tribunal expects that Iran will comply with this obligation. Consequently, the requests by the United States for an order to Iran for replenishment and for additional relief are denied."
8 IUSCT, *Decision No. 132-A33-FT*, Op. Cit, Para. 15.
9 All decisions and awards of the Tribunal shall be final and binding.
10 IUSCT, *Decision No. 132-A33-FT*, Op. Cit, Para. 19.

that Iran Replenish the Security Account," which the Tribunal had denied.[1] Iran contended that after a final judgment is issued, the Tribunal can only interpret, correct minor errors in the judgment based on Articles 35 to 37 of the Tribunal's rules,[2] or issue an additional ruling under certain conditions. Each party is afforded thirty days to request such matters from the Tribunal, which had not occurred in case *A/28*.[3] Iran viewed the United States' request as unauthorized regarding the enforcement of the Award in case *A/28*.[4]

In its ruling, the Tribunal disagreed with Iran's position that the current claim was identical to the one raised by the United States in case *A/28*.[5] According to the Tribunal, contrary to Iran's assertion, the dispositif of the ruling in case *A/28* did not solely pertain to subsection B of Paragraph 95, which rejected the United States' request for an order directing Iran to restore the security account and the additional request. Instead, the *dispositif* or the *operative part* of the decision encompassed all of the Tribunal's opinions expressed in Paragraph 95, not just the last nineteen words of the last sentence of subsection B, as claimed by Iran.[6]

The Tribunal reasoned that the dispositif of the ruling in case A/28 explicitly stated Iran's obligations under Article 7 of the General Declaration, specifically declaring that Iran is obligated to "immediately restore the security account whenever it falls below $500 million..." Furthermore, in the second clause of Paragraph 95, it was noted that "Iran has not complied with this obligation since late 1992." Based on these two opinions, the Tribunal expressed that it "expects that Iran will comply with this obligation" which was the basis for rejecting the United States' request.[7]

The Tribunal regarded all these opinions as part of the dispositif of the decision issued in case *A/28*, asserting that they were subject to res judicata and thus binding and enforceable for both parties.[8]

The Tribunal confirmed the principle now stated in Article 14(2) of the International Law

1 IUSCT, *Decision No. 132-A33-FT*, Op. Cit, Para. 16.

2 ARTICLE 35: INTERPRETATION OF THE AWARD:

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral Tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 32, paragraphs 2 to 7, shall apply.

ARTICLE 36: CORRECTION OF THE AWARD:

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral Tribunal may within thirty days after the communication of the award make such corrections on its own initiative.
2. Such corrections shall be in writing, and the provisions of article 32, paragraphs 2 to 7, shall apply.

ARTICLE 37: ADDITIONAL AWARD:

3. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
4. If the arbitral Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.

3. When an additional award is made, the provisions of article 32, paragraphs 2 to 7, shall apply.

3 IUSCT, *Decision No. 132-A33-FT*, Op. Cit, paras. 19-20.

4 Ibid, Para. 21.

5 Ibid, Para. 26.

6 IUSCT, *Decision No. 132-A33-FT*, Op. Cit, para. 27.

7 Ibid, Paras. 28-32.

8 Ibid, Para. 28.

Commission's Draft Articles on the Responsibility of States,[1] indicating that the situation in the current case is the same. Iran remains in breach of its obligation under Article 7 until it places the agreed-upon $500 million in the security account and until the President of the Tribunal certifies that all arbitral awards against Iran have been executed. Therefore, the Tribunal classified Iran's non-compliance as a continuous breach of obligation.[2]

According to the Tribunal, "the United States has the right to bring a new claim based on Iran's failure to comply with its obligations under Article 7 since December 2000 and to request that this non-compliance be addressed."[3] Hence, Iran's argument regarding the res judicata was dismissed.[4]

Ultimately, the Tribunal requested that Iran "fulfill its obligation to restore the security account, as determined in the Tribunal's decision in case *A/28*." The United States' requests, which included a) suspending proceedings regarding ongoing cases against Iran until the execution of Paragraph 11 of the aforementioned obligation and b) payment of arbitration costs incurred in case *A/28* by Iran, were denied.[5]

2.1.1. The Security Account Case: Continuation of Breach of Obligation and Res Judicata

It appears that the Tribunal, in its decision regarding case *A/28*, correctly noted that it could not foresee the non-compliance with obligations by Iran, after clarifying the discrepancy in interpreting the statement, especially since the tribunal had settled the interpretative conflict entirely. Consequently, the Tribunal rejected the United States' request. In this context, the ICJ similarly argued in 2002 in the case of Land and Maritime Boundary between *Cameroon* and *Nigeria*. In that case, Cameroon requested not only the cessation of Nigeria's administrative and military presence in the disputed territory but also sought guarantees against future occurrences. The Court reasoned that since the present ruling would definitively and mandatorily establish the land and maritime boundaries between the parties, it would resolve any existing dispute. Thus, the Court could not predict a scenario in which either party would fail to respect the territorial sovereignty of the other after withdrawing police and military forces, leading to the rejection of Cameroon's request.[6]

In the case *A/33*, which, in the author's view, posed perhaps the most significant challenge to the Tribunal regarding the issue of res judicata, it seems that the Tribunal could have simply rejected the United States' request based on the existence of the res judicata rule by conducting a triple identity test.

The Tribunal, in a way, resisted applying res judicata in case *A/33*, making it appear that their stance on this principle was stringent and set at a very high threshold. The significance of this case lies in the fact that these two discussed cases were perhaps the best and closest examples

1 The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.
2 IUSCT, *Decision No. 132-A33-FT*, Op. Cit, Para. 33.
3 Ibid, Para. 35.
4 Ibid, Paras. 35-36.
5 Ibid, Para. 45.
6 ICJ, *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea Intervening)* (Judgment, 10 October 2002) para 318.

to the principle of res judicata. As noted, the Tribunal could have acknowledged the identity of the parties, the subject matter, and the cause of action. Considering the ICJ's perspective in the "Haya de la Torre" case,[1] the Tribunal might have accepted the res judicata claim regarding case *A/33* and refrained from examining it. However, by emphasizing the role of time in the claimant's assertion, the Tribunal regarded time as a factor in assessing the existence of res judicata. Consequently, a majority of the Tribunal's judges did not consider the cause of the current case to be identical to that of the previous case and opted for a renewed examination.

In fact, it must be stated that the Tribunal's approach in this case was such that the continuous breach of an obligation allows the opposing party to assert this breach at any time. It is noteworthy that the Tribunal in case *A/28* merely requested Iran to adhere to its obligations. Although it appears that the ruling was ineffective, it was nonetheless binding and final, with no basis for reconsideration. Initially, it seems that the Tribunal attempted to incorporate the element of time into the cause of action, striving to revisit its ruling from case *A/28*. However, the majority of the judges, even after that, added nothing to what had been stated in the previous ruling, and it can be argued that the outcomes of both rulings were entirely the same, thereby reinforcing the assertion of the identity of cases *A/28* and *A/33*. The Tribunal's approach suggested that a breach of an obligation might be continuous, and in the event of such continuity, the possibility of distinguishing breaches of obligations over different time periods and indefinitely exists. This, of course, appears to contradict the fundamental philosophy underlying the issue of res judicata.

2.2. Expanding the Concept of Res Judicata in the Case of Iranian Tangible Military Properties Held by Third Parties

Another significant case related to res judicata in the Tribunal's jurisprudence is the case known as *B/61*. The dispute revolved around the claims of Iran for compensation from the United States for damages incurred due to the United States' refusal to issue export licenses for certain assets that, according to Iran, belonged to it at the time the Algiers Accords were formalized on January 19, 1981, and that were located in the United States or otherwise subject to U.S. jurisdiction.[2]

In this stage of the proceedings, which included the issuance of two prior partial rulings[3] by the Tribunal in this matter, the United States raised a claim denying the previous rulings, while Iran considered these rulings to fall under the scope of res judicata.

In the beginning of its ruling, the Tribunal addressed whether the decision in the relevant paragraphs of Partial Ruling No. *A/15* (II: A and II: B),[4] which implied an obligation for the

1 *Haya de la Torre Case (Colombia v Peru), Merits, Judgment [1951] ICJ Rep 71, ICGJ 191 (ICJ 1951), 13 June 1951, International Court of Justice, p 71, para 82; Asylum Case (Colombia v Peru), Merits, Judgment [1950] ICJ Rep 266, ICGJ 194 (ICJ 1950), 20 November 1950, para 266.*

2 IUSCT, *Award No 601, Cases No A3, A8, A9, A14, A21 & B61, Doc No 916* (Partial Award, July 2009), paras 4-7.

3 Partial Award No. A/15 (II: A and II: B) and Case No. B/1 (Claim 4) established, for the first time in the latter case, the existence of an implicit obligation to compensate for the failure to export military property. See: IUSCT, *Award No. 382-B1-FT, Case No. B1* (Claim 4, August 1988), Para. 66.

4 The Tribunal ruled in these awards: " United States Treasury Regulations that excluded from the transfer direction properties which were owned solely by Iran but as to which Iran's right to possession was contested by the holders of such properties on the basis of any liens, defences, counterclaims, set-offs or similar reasons, were inconsistent with the obligations of the United States under the General Declaration. The Tribunal is not on the present record in a position to determine the relevant facts with respect to any particular property." Furthermore, " The United States has an implicit obligation under the General Declaration to compensate Iran for losses it incurs as a result of the refusal by the United States to permit exports of Iranian properties subject to United States export control laws applicable prior to 14 November

United States to compensate Iran for losses it incurs as a result of the refusal by the United States to licence exports of Iranian properties to export its properties subject to United States export-control laws applicable prior to 14 November 1979, holds res judicata effect concerning the proceedings in case B/61.[1]

The Tribunal initially described the principle of res judicata as a widely accepted legal principle among civilized nations,[2] emphasizing that it is not only broadly recognized in domestic legal systems but also a well-established rule in international law. The Tribunal referenced this principle in the Claims Settlement Declaration, particularly in Article 4(1) of the Declaration[3] and Article 32(2) of the Tribunal's Rules,[4] asserting that it is applicable only where the parties and the disputed claim are identical. The Tribunal further differentiated the second element into two parts: the subject matter and the cause of action, effectively identifying three customary elements for the identity of claims (or the *triple identity test*).[5]

Continuing, the Tribunal noted that res judicata does not need to encompass all aspects of a decision. In an innovative approach compared to other tribunals, it stated that, in addition to the operative part (dispositif) of a decision, the reasons (motifs) provided in a decision would also have res judicata effect as long as they relate to the disputed subject matter.[6] The Tribunal articulated, "In the view of the Court if any question arises as to the scope of res judicata attaching to a judgment, it must be determined in each case having regard to the context in which the judgment was given... ."[7]

Citing the ICJ, the Tribunal added, "In respect of a particular judgment, it may be necessary to distinguish between, first, the issues which have been decided with the force of res judicata, or which are necessarily entailed in the decision of those issues; secondly any peripheral or subsidiary matters, or obiter dicta; and finally matters which have not been ruled upon at all.... If a matter has not, in fact, been determined, expressly or by necessary implication, then no force of res judicata attaches to it, and a general finding may have to be read in context in order to ascertain whether a particular matter is or is not contained in it."[8]

Regarding the justification of the relevant prudence for the principle of res judicata, the Tribunal aligned its approach with the ICJ's reasoning in the dispute between *Bosnia and Herzegovina* and *Serbia* over the "Application of the Convention on the Prevention and Punishment of the Crime of Genocide," characterizing it as having both public and private natures.[9] In that case, the ICJ indicated that the principle of res judicata serves two purposes: one general and the other specific. The public nature emphasizes that first, the stability of legal relations necessitates the conclusion of disputes, and second, it is beneficial for any party to the

1979." Additionally, " The Respondent, THE UNITED STATES OF AMERICA, is not obligated by the General Declaration to compensate the Claimant, THE ISLAMIC REPUBLIC OF IRAN, for any storage charges, depreciation or other losses incurred with respect to Iranian properties prior to 19 January 1981." See: IUSCT, *Award No. 529-A15(II: A and II: B)-FT*, Op. Cit, Para. 77.

1 IUSCT, *Award No. 601*, Op. Cit, Para. 113.

2 Ibid, at Para. 114.

3 Article IV: 1. All decisions and awards of the Tribunal shall be final and binding.

4 IUSCT, TRIBUNAL RULES OF PROCEDURE (3 May 1983): ARTICLE 32: FORM AND EFFECT OF AWARD: … 2. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.

5 IUSCT, *Award No. 601*, Op. Cit, Para. 114.

6 The Tribunal referenced Case A/33, Decision No. 132 of the General Assembly dated 9 September 2004, where the same issue was affirmed.

7 ICJ,Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (26 February 2007) ICJ, para 125; Award No 601 (Op. cit) para. 115.

8 ICJ, Bosnia and Herzegovina v. Serbia and Montenegro, Op. Cit, Para. 126 IN Award No. 601, Op. Cit, Para. 115.

9 IUSCT, *Award No. 601*, Op. Cit, Para. 115.

dispute that the matter previously adjudicated in its favor should not be reopened for argument. Furthermore, according to the Tribunal, depriving a party of the benefit of a judgment previously obtained should generally be considered a violation of the principles governing the resolution of legal disputes.[1]

Continuing with the specific facts of the present case, the Tribunal stated that it could not agree with the United States' argument that the implicit obligation established by the Tribunal in case *A/15* (*II: A and II: B*) cannot have res judicata effect.[2] The Tribunal also rejected the United States' argument that the decisions in question were contained in an interim ruling rather than a final judgment, and thus do not fall under res judicata.[3] The Tribunal opined that the fact that the Tribunal's decision is expressed in a Partial Award does not preclude the establishment of res judicata.[4] What matters is whether the Tribunal's determination regarding the existence of an implicit obligation definitively resolves the matter between Iran and the United States, irrespective of whether the decision was rendered as a partial award or final decision.[5]

The Tribunal acknowledged that a partial award may not address all the subjects of the disputes in the case, but the issues it does decide are conclusively determined, not temporarily. A partial award, although it is partial, is considered a "judgment" under Articles 1, 4(1), and 4(3) of the Claims Settlement Declaration and Article 2 of the Tribunal's Rules and, therefore, any partial award is final and binding on the parties.[6]

The tribunal, considering the evidence presented by the parties, observed that the United States appeared to have defined the principle of res judicata in a narrow manner, asserting that the cases numbered *A/15* (II: A and II: B) and *B/61* pertained to different claims and assets, thus not falling under the principle of res judicata. Conversely, Iran adopted a broader interpretation, arguing that since both cases *A/15* (II: A and II: B) and B/61 involved "exactly one type of asset subject to export laws," the principle should apply.[7]

The Tribunal then examined whether the principle of res judicata requires that the assets in question be precisely the same across the cases or if it suffices that both cases relate to the same type or category of assets for the purpose of establishing res judicata.[8]

In response to this question, the Tribunal initially posed a general inquiry: whether the exact sameness of the subject matter of a claim is necessary for the application of res judicata in international law. The Tribunal concluded that, depending on the specific circumstances of a case, there could be varying interpretations of the principle that do not necessitate exact sameness of the subject matter of the claims.[9]

As a supplement to its response, the Tribunal referred to a precedent from the United States, cited during a hearing on general issues related to the current case. In that instance, The WTO Panel opined that the applicability of res judicata in dispute settlement would only arise if

1 ICJ, *Bosnia and Herzegovina v. Serbia and Montenegro*, Op. Cit, Para. 116 IN *Award No. 601*, Op. Cit, Para. 116.
2 IUSCT, *Award No. 601*, Op. Cit, Para. 117.
3 Ibid.
4 Ibid.
5 Ibid, Para. 117.
6 Ibid.
7 Ibid, Para. 118.
8 Ibid.
9 Ibid, Para. 119.

the basis of the current dispute closely mirrored that of a previous case, in line with accepted interpretations of the doctrine. It further emphasized that for res judicata to be relevant, there must be a substantial identity between the issues previously ruled on and those presented in the current case. In this instance, the Panel concluded that the two matters were not identical, as the specific measures in question were not considered in the prior case.[1]

The Tribunal noted that, for res judicata to apply to a claim, there must be at least a substantive similarity between the matter previously adjudicated and the matter referred to the subsequent authority. The Panel concluded that the two issues were not the same, as neither the specific actions in the current case nor similar actions at the time of the establishment of that authority had been explicitly examined in the previous case.[2] Furthermore, the Tribunal recalled that some legal scholars maintain that the principle of res judicata pertains to actions that are generally similar, rather than requiring exact sameness of the conflicting subjects.[3]

The Tribunal emphasized that some international Tribunals have referenced the principle of res judicata in broader terms.[4] For instance, in a dispute before ICSID involving Mexico,[5] the center stated, "A judicial

decision is only res judicata if it is between the same parties and concerns the same question as that previously decided."[6] The arbitral board, citing the Franco-Venezuelan Mixed Cl. Commission, noted that a right, subject, or fact that has explicitly been examined by a competent court and directly ruled upon as the basis for compensation could not be contested."[7] Additionally, in a dispute before the Tribunal of claims between the United States and Great Britain, the Tribunal stated that the principle of res judicata applies where the parties and the subject matter of the dispute are the same.[8]

The Tribunal acknowledged that the concept of res judicata in international law may be broader than in some domestic jurisdictions, asserting that the appropriate criterion for determining the applicability of the principle is the identity of the parties as well as the identities of the subject matter and cause of action, as previously mentioned.[9]

The Tribunal declared that the necessity for exact sameness in the subject matter of the dispute depends on the scope of the prior findings on the Decision in question. It indicated that the Tribunal must revisit previous cases to precisely define the scope of its decision regarding the existence of an implicit obligation in case *A/15* (*II: A*) within the context of the dispute presented by the parties.[10] Following the precedent of the ICJ in the case of "Haya de la Torre,"[11] after examining the claims and submissions of the parties,[12] the Tribunal established the scope

1 India/Measures Affecting the Automotive Sector (Complaints by the European Communities and the United States, WT/DS146/R and WT/DS175/R), report of the Panel, para. 7.60 (21 Dec. 2001) IN IUSCT, *Award No.601*, Op. Cit, Para. 119.
2 IUSCT, *Award No.601*, Op. Cit, Para. 79.
3 IUSCT, *Award No. 601*, Op. Cit, Para 119 et seq.
4 Ibid.
5 *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3 (26 June 2002).
6 Ibid, at Para. 39.
7 Franco-Venezuelan Mixed Cl. Comm., Compagnie Générale de l'Orénoque, 1905. REPRINTED IN Ralston, Jackson Harvey. Report of French-Venezuelan Mixed Claims Commission of 1902. No. 533. US Government Printing Office, 1906, pp. 244-355.
8 American-British Claims Tribunal, reprinted in 16 Reports of International Arbitral Awards 323, 324 (1922).
9 IUSCT, *Award No. 601*, Op. Cit, Para. 120.
10 Ibid, Para. 120.
11 ICJ, *Haya de la torre*, Op. Cit, para 79 & 80.
12 In the proceedings of Case No. A/15 (2:A), Iran claimed that the United States, by failing to facilitate the immediate transfer of all Iranian

of its decisions and referred to its rulings in the two decisions of case *A/15* (II: A and II: B). It subsequently clarified that the ruling given in that case was declaratory and somewhat abstract, pertaining to an interpretative issue of the public statement, without addressing the specific matters relating to each of the assets involved in the relevant contracts between Iran and private U.S. companies. Consequently, the Tribunal stated that the ruling made in case *A/15* (II: A and II: B), which recognized the implicit obligation of the United States,[1] retains res judicata effect in the present case (numbered *B/61*).[2]

The Tribunal further drew attention to another claim by the United States regarding the existence of a "manifest error of law" in the Tribunal's previous ruling and its effect on the inapplicability of the principle of res judicata. In this regard, it clarified that "No *res judicata* effect attaches to a decision by a competent court or tribunal when that decision is the result of a manifest error of law."[3] According to the Tribunal, the scope of this exception to the principle of res judicata is rather narrow "because the commission of "mere" or "other" errors of law is not sufficient to deny the final and binding effect of decisions."[4] The Tribunal referenced the opinion of a U.S.-Canadian Arbitration Tribunal case, which stated that the correct rule does not lie in distinguishing between essential errors of law and other such errors but rather in "manifest" errors, including situations where a Tribunal ignores a relevant treaty or bases its decision on an agreement that the parties admit has been terminated, or other similar errors of law.[5] The Tribunal found that the error in interpreting a treaty, which the claimant argued warranted a revision, was not a "manifest" error.[6] Ultimately, the Tribunal concluded that even if the criticisms were justified, they would not constitute grounds for overturning the decision.[7]

The Tribunal found this narrow approach consistent with the rationale underlying the principle of *res judicata*, which is to provide an end to disputes. It added that the cases falling within the scope of this exception to *res judicata* are those where the Tribunal has ignored a relevant treaty or has based its ruling on an agreement that the parties acknowledge has been terminated. According to the Tribunal, "What these examples have in common is that the error of law is incapable of rebuttal by the opposing party and not subject to different interpretations. Merely disagreeing with a tribunal's interpretation or construction of a treaty or other legal document does not qualify as a "manifest error of law."[8] Therefore, the Tribunal did not consider its decision to fall under the issue of manifest error of law and thus regarded its previous Partial Award as subject to *res judicata*.[9]

tangible assets located within its jurisdiction, or alternatively, by not compensating Iran for its refusal to arrange the transfer of these assets, had violated its obligations under the Algiers Accords. Iran sought a declaratory judgment to establish this breach, requiring the United States to make the necessary arrangements for the transfer of those Iranian assets that had not yet been transferred, and also obligating the United States to compensate for all direct and indirect damages claimed by Iran as a result of this breach, with the amount of damages to be determined in subsequent proceedings.

1 Hamid Reza Aloumi Yazdi, 'Establishing Implicit Obligations in International Treaties: Revisiting Two Awards of the Iran-United States Claims Tribunal, Award in Case B/1 (Claim 4) and Award in Case A/15 (2-A)' (2011) 13 *Public Law Research* 197.

2 IUSCT, *Award No. 601*, Op. Cit, Paras 123-125.

3 Ibid, Paras. 126-7.

4 Ibid, Para. 127.

5 *Trail Smelter Case (United States v Canada)*, 16 April 1938 and 11 March 1941, in UN, Reports of International Arbitral Awards, Recueil des Sentences Arbitrales, vol III, pp 1905-1982, pp 1956-1957. IUSCT, *Award No 601* (Op. cit) paras 125-127 et seq.

6 IUSCT, Award No. 601, Op. Cit, Paras. 125-127 et seq.

7 Ibid.

8 Ibid, Para. 127.

9 Ibid, Para. 128.

Regarding the United States' position on the insufficiency of discussion and argument, the Tribunal determined that the issue is not whether the matter of the implicit obligation was fully discussed in case No. *A/15* (2:a) but rather whether the matter was raised at all and, if it was, whether the parties had a full opportunity to present all the arguments they wished to make.[1] The Tribunal also cited Judge Mohamed Shahabuddeen, a former judge of the ICJ, who stated, "It is clear that where an issue has been raised, the Court may competently consider all pertinent arguments and authorities, even if not presented by the parties."[2] Consequently, the Tribunal concluded that as long as the issue was raised and the parties had the opportunity to present their evidence regarding it, there was no need for the Tribunal to determine how much of the written submissions or oral arguments of the parties in the discussed cases were dedicated to the issue of the implicit obligation.[3]

The Tribunal reiterated that its jurisdiction is based on the consent of the parties and that it only issues rulings on the referred matters and nothing more. At the same time, it clarified that it is not limited to the legal arguments presented by the parties; the issue of the United States' implicit obligation to pay compensation had been fully raised and examined previously, and the United States' claim is inadmissible and cannot serve as grounds for an exception to *res judicata*.[4] In another argument, referring to Articles 15[5] and 29[6] of the Tribunal's procedure rules, the assumption that the United States was deprived of an adequate opportunity to present its evidence regarding the implied obligation was rejected. The fact that the United States is dissatisfied with the outcome of the ruling in case No. *A/15* (II: A and II: B) cannot provide grounds for accepting the United States' claim.[7]

1 Ibid, Para. 129.

2 Mohamed Shahabuddeen, *Precedent in the World Court* (Vol 13, Cambridge University Press 2007) 140, IN *Award No. 601*, Op. Cit, Para. 129.

3 IUSCT, *Award No. 601*, op. cit., Para.129.

4 Ibid, Para. 130.

5 ARTICLE 15: GENERAL PROVISIONS

1. Subject to these Rules, the arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.
2. If either party so requests at any stage of the proceedings, the arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
3. All documents or information supplied to the arbitral Tribunal by one party shall at the same time be communicated by that party to the other party.

Notes to Article 15

1. 1As used in Article 15, the terms "party" and "parties If mean the arbitrating party or parties, as the case may be.
2. In applying paragraph 2 of Article 15, the arbitral Tribunal shall determine without hearing any written requests or objections of the concerned arbitrating parties with respect to procedural matters unless it grants or invites oral argument in special circumstances.
3. In complying with paragraph 3 of Article 15, an arbitrating party shall follow the procedures set forth in Article 2 of the Tribunal Rules.
4. The arbitral Tribunal may make an order directing the arbitrating parties to appear for a pre-hearing conference. The pre-hearing conference will normally' be held only after the Statement of Defense in the case has been received. The order will state the matters to be considered at the pre-hearing conference.
5. The arbitral Tribunal may, having satisfied itself that the statement of one of the two Governments - or, under special circumstances, any other person - who is not an arbitrating party in a particular case is likely to assist the Tribunal in carrying out its task, permit such Government or person to assist the Tribunal by presenting oral or written statements.

6 Article 29: 1. The arbitral Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

7 IUSCT, *Award No. 601*, Op. Cit, para. 131.

Ultimately, the Tribunal found that the dispositif of the partial ruling in case No. *A/15* (II: A and II: B)[1] is subject to *res judicata* and, moreover, that the reasons leading the court to establish their conclusion and operative parts (dispositif) have *res judicata* effect.[2] It ruled that "the United States has an implicit obligation to compensate Iran for any losses it incurs as a result of the lawful refusal by the United States to permit exports of Iranian properties subject to United States export-control laws applicable prior to 14 November 1979. This determination by the Tribunal has res judicata effect in the present Case No. *B61*"[3]

2.2.1. *B/61*: A Case for Res Judicata

The majority, in contrast to the previously established jurisprudence of the Tribunal, including what was observed in case *A/33* regarding the ruling in case *A/28*, acknowledged that the appropriate criterion for determining the applicability of the doctrine of res judicata to a dispute is the presence of three elements: identity of the parties, identity of the subject matter, and identity of the cause of action. Regarding the claim that there was a difference in the causes of action due to the fact that the assets in question were not "entirely" identical, the Tribunal stated that, apart from the specific circumstances in each case, there is no requirement for the exact identity of the subject matter of the claims. The Tribunal further added that res judicata could apply to actions that are generally similar, and, compared to what has been seen in the Tribunal's previous jurisprudence, it adopted a lenient approach towards the issue of res judicata, thereby expanding its scope.

However, it is important to note that this occurred while the Tribunal ultimately, after reaffirming the existence of the United States' implicit obligation to pay compensation to Iran, curiously denied[4] the existence of any such obligation and ultimately dismissed all of Iran's claims without addressing their merits. This expansion of the concept of *res judicata* at this juncture and in this case, in relation to the mentioned issues, may have been unnecessary.[5]

In this case, which contains one of the most notable and interesting opinions regarding the reasons (motifs), the Tribunal deemed all motifs related to the dispositif of the judgment to be subject to res judicata, thereby expanding the principle of *res judicata*'s scope. Until that point, this issue had not been articulated in international law, and the Tribunal was pioneering in this regard. Generally, other arbitration bodies do not consider facts to be subject to *res judicata*. In a ruling issued by the Permanent Court of Arbitration in 1977, concerning the delimitation of the continental shelf between the United Kingdom and France, the body restricted the application of res judicata solely to the dispositif of the judgment itself and not to the reasoning and related facts, viewing the latter merely as tools for potential future interpretation of the ruling.[6]

Nonetheless, this perspective of the Tribunal was later endorsed by some international arbitration bodies, such as ICSID. In the ruling known as Apotex, a Canadian company named Apotex filed a complaint against the U.S. government based on the North American Free Trade

1 IUSCT, *Award No. 529-A15(II: A and II: B)-FT*, Op. Cit, Para. 77.
2 IUSCT, *Award No. 601*, Op. Cit, para. 133.
3 Ibid, Para. 183(A).
4 Ibid, Paras. 134-183
5 Michael Ottolenghi, 'A14, and B61 Islamic Republic of Iran v United States: Case Nos A3, A8, A9, Iran-US Claims Tribunal Partial Award Concerning US Duty, Under Algiers Accords, to Compensate Iran for Blocking Exports of Property' (2010) 104 *American Journal of International Law* 474-480.
6 *Decision of the PCA between the United Kingdom and France* (14 March 1978) (2006) XVIII Reports of International Arbitral Awards 295.

Agreement (NAFTA) at ICSID. The United States, as a party to the dispute, raised objections regarding the jurisdiction of the Tribunal and the applicability of res judicata to this claim, arguing that it was similar to a previous ruling between the said company and the United States under the arbitration rules of NAFTA and UNCITRAL.[1] Initially, the Tribunal stated that the rulings issued under NAFTA were subject to res judicata and, in addition, referenced the triple identity test proposed by Judge Anzilotti in his dissenting opinion in the *Chorzow Factory* case. After reviewing international jurisprudence, it concluded that the scope of *res judicata* is broad and, in a similar opinion to that of the Tribunal, asserted that, in addition to the dispositif of the ruling, all evidence and what is recognized as the reasons and facts presented in the judgment are also subject to res judicata.[2]

It appears that the Tribunal has erred both in its reliance on the principle of res judicata and in its application of it in this case. Assuming the correctness of the majority's findings regarding the nature of the dispute, when the majority determined that the assets in Case *B/61* are not identical to those in Case *A/15* (subsections 2: a and 2: b), it seems that the Tribunal's reasoning regarding the absence of a requirement for the exact identity of the assets in question raises doubts. This issue prevents the successful application of the tripartite test related to res judicata as proposed by Judge Anzilotti. In fact, the Tribunal downplayed the significance of the triple identity test and did not apply it as it ought to have.

The critical issue is the dissimilarity of the causes of action (even assuming they may share some common aspects) in these two disputes.[3] The fact that the Tribunal derived its conclusion about the "exact identity of the assets in question" from a peripheral perspective offered by a judge in a dispute resolution body within the WTO is, firstly, an ambiguous and debatable matter, and secondly, it constitutes a clear deviation from the acceptance of established principles in international law and the aforementioned tripartite test.[4] It appears that the assertion that the characteristics of the assets in the *A/15* cases (subsections 2: a and 2: b) are fundamentally not identical is entirely valid.

Therefore, it seems that the Court has not correctly utilized the principle of res judicata to bar the re-litigation of its previous precedents.[5] The majority's modification of the tripartite test for res judicata to align it with the circumstances of this case contradicts the policies that the Tribunal cited from the ICJ, which emphasized the finality of legal disputes and the enhancement of judicial efficiency. The expansion of the concept of cause of action in light of the existing circumstances does not serve to advance these goals nor does it facilitate their proper implementation; it merely extends the scope of the cause of action as one of the three essential elements necessary to establish the existence of res judicata.

The claims presented do not, in fact, possess the requisite similarity to fall under the purview of res judicata, and moreover, the subject matter of the disputes in these cases is distinctly

1 ICSID, *Apotex v United States*, ICSID Case No Arb(AF)/12/1 (25 August 2014), para. 2.53
2 Ibid, paras. 7.32, 7.42
3 Ottolenghi, Op. Cit. (2010)
4 Ibid.
5 "Citing Panel Report, India—Measures Affecting the Automotive Sector, WT/DS146/R &WT/DS175/R, para. 7.60 (adopted Apr. 2, 2002); Vaughan Lowe, Overlapping Jurisdiction in International Tribunals, 1999 AUSTL. Y.B. INT'L L. 191, 202; August Reinisch, The Use and Limits of Res Judicata and Lis Pendens as Procedural Tools to Avoid Conflicting Dispute Settlement Outcomes, in 3 THE LAW AND PRACTICE OF INTERNATIONAL COURTS AND TRIBUNALS 37, 71 (2004)" IN Ottolenghi, Op. Cit. (2010).

different. Consequently, the Tribunal should not have resorted to the issue of res judicata.[1] In this regard, the ICJ, in the *Genocide* case, emphasized that its ruling is final and not subject to appeal, determining that the scope of the res judicata rule is limited solely to the parties involved and "in relation to the particular case at hand," thus rejecting its extension to other disputes.[2]

The error committed by the majority lies in the fundamental lack of necessity to discuss the application of res judicata concerning previous claims. The straightforward reason for this is that the prior ruling is one issued by the Tribunal itself, and just as reliance on identical findings in one ruling is frequently observed in subsequent rulings of arbitration bodies such as ICSID, the findings of the Tribunal indeed hold value for the Tribunal itself, negating the need for re-examination. Interestingly, the majority itself acknowledged the previous rulings of the Tribunal as having "precedential value" and took that as a given.[3]

In reality, the majority could have simply reaffirmed its previous findings, considering them as conclusive and unappealable, and argued that in the matters discussed, the Tribunal had reached a satisfactory conclusion and saw no reason to reject or reconsider them.

Conclusion

Res judicata as a principle has been an internationally law-founded concept to which the Iran-United States Claims Tribunal has generally acknowledged in its decisional framework as per the governing structures of the Algiers Accords and the *UNCITRAL Model Law*. This study, based on the case jurisprudence of the Tribunal, however, reveals inconsistencies and dispersion within the enforcement approach of its applicability, leading to far-reaching ramifications for the conclusiveness and ascertainability of final determinations rendered.

The security account cases (*A/28* and *A/33*) demonstrate the manner in which the Tribunal, despite the prima facie identification of parties, subject matter, and cause of action, failed to apply the principle of res judicata simply due to differences in time frames. This basis deviates from conventional conceptions of the principle. Conversely, in the case of Iran's Tangible Assets in the United States (*B/61*), the Tribunal extended *res judicata* to not only the dispositif (operative decision) but also the motifs (reasoning and findings of fact), an expansion that significantly broadened the traditional limits of the principle in international law. This combined application—both elevating the threshold for res judicata while simultaneously expanding its application—has produced conclusions that are sometimes contradictory and, in some cases, have not been effectively implemented.

As case B/61 remains unresolved, the issue of res judicata will likely continue shaping the Tribunal's jurisprudence and introducing additional legal obstacles for Iran in both the IUSCT and other international proceedings. A consistent and dependable application of res judicata remains essential for ensuring legal certainty, finality of disputes, and the integrity of the Tribunal. Failure by the Tribunal to adopt a more systematic and precise approach risks undermining the stability of international arbitration, as well as the rights of the parties under its jurisdiction.

1 Ottolenghi, Op. Cit. (2010) 8.
2 ICJ, *Genocide Case*, Op. Cit, Para. 115.
3 IUSCT, *Award No. 601*, Op. Cit, Para. 113.

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