Iranian Journal of International and Comparative Law
Volume 2, Issue 2, 2024

A Look at Contractual Compensation in the Practice of the Iran-United States Claims Tribunal

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Article Info

Article type:
Research Article

Article history:
Received
22 November 2024

Received in revised form
15 December 2024

Accepted
29 December 2024

Published online
31 December 2024

https://ijicl.qom.ac.ir/article_3334.html

Keywords:
Compensation, Iran-United States Claims Tribunal, Interest, Breach of Contract, Reasonable Compensation.

ABSTRACT

The principle of full compensation for damages is an accepted tenet in law, requiring that all damages incurred by the injured party be compensated. This study examines the methods of contractual compensation in the Iran-United States Claims Tribunal. First, the concept of the principle of contractual compensation and its conditions are discussed in various conventions and international legal documents. Given that the Tribunal represents one of the largest case-specific international arbitrations, its opinions and rulings can significantly influence or, at the very least, elucidate the practical aspects of arbitration within the realm of international law. This paper presents the rulings of the Tribunal, with a focus on decisions related to contract termination, reasonable compensation, and outstanding invoices. The findings indicate that in most cases, the Tribunal has awarded interest for damages and has followed a monetary approach to compensation.

Cite this article: Shahla, M., & Ziaie Tabatabaie, H.R., (2024). A Look at Contractual Compensation in the Practice of the Iran-United States Claims Tribunal, *Iranian Journal of International and Comparative Law*, 2(2), pp: 130-146.

10.22091/ijicl.2025.11897.1120
Publisher: University of Qom

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Introduction

Since ancient times, individuals have relied on one another to meet their needs. With the advancement of society and significant changes within it, individuals transformed into legal entities. This means that not only did individuals have needs, but they also began to create legal personalities by coming together, allowing groups to become parties capable of asserting rights and obligations.

One of the primary methods through which individuals incur obligations is through contracts. Historically, contracts have been established, both verbally and in writing, among various nations. As societies have evolved and legislative bodies have been formed, specific conditions for the formation, execution, and termination of contracts have been established for the parties involved.

It must be noted that some contracts are inherently unenforceable, and even if enforced, they may not be fully executable. Such non-fulfillment can lead to damages for the party benefitting from the obligation. Consequently, legislators contemplated establishing regulations to address such situations. Despite these efforts, legislators have not been able to delineate all governing regulations regarding non-fulfillment of obligations by the parties. Therefore, it has been mandated that, in these circumstances, one must first consider the stipulations outlined in the contract created by the parties. Where the parties remain silent on specific issues, supplementary laws or customary practices should be consulted.

In today›s world, with the expansion of trade among various nations, the nature of contracts has evolved. This does not imply that the foundational principles have changed; rather, they have taken on new forms. Modern contracts may be formed between states or individuals of different nationalities, potentially executed in a third country, governed by the laws of a fourth country, and even enforced in a fifth country.

Before the Islamic Revolution of 1979, Iran was a developing nation with numerous contracts established between Iranian natural and legal persons and foreign entities. Many of these contracts were concluded prior to 1979, but some continued post-Revolution.

The primary focus of this study is on the contracts established between the governments of Iran and the United States, or between their respective natural and legal persons, which can be categorized into three groups:

1. Contracts that were completed before the 1979 Revolution.

2. Contracts that continued after the Revolution but became unenforceable due to the prevailing conditions.
3. Contracts that retained their enforceability post-Revolution but were nonetheless suspended.

For the first category, there are no significant issues as these contracts were concluded and settled. However, there were instances where contracts were executed, but settlements were not finalized, leading parties to seek resolution. The two remaining categories comprised incomplete contracts requiring clarification from the new Iranian government. Despite some contracts being left unfinished, others were being pursued, albeit slowly. This situation escalated when, in 1979, students known as the «followers of the Imam›s line» seized the U.S. Embassy in Tehran. From that point onward, contracts and exchanges between Iran and the U.S. underwent a significant transformation, particularly following the hostage crisis, which shifted relations from a relatively normal state to an abnormal one.

As per the Algiers Accords, disputes between the governments of Iran and the United States, as well as those between their citizens, were addressed through specific measures, leading to the formation of the «Iran-United States Claims Tribunal.» This allowed parties to refer disputes arising from contracts, expropriations, and nationalizations to the Tribunal. The Algiers Accords outlined the conditions for accepting claims and emphasized the governing law for contracts, along with the necessary procedural rules for adjudicating these disputes.

With the identification of unresolved contracts and the determination of the appropriate forum for their resolution, the main subject concerns the compensation for damages resulting from breaches of contracts and the non-fulfillment of obligations. The Tribunal must evaluate the contracts, consider the arguments of the parties regarding the damages incurred, and determine compensation in accordance with the principle of full restitution for all losses suffered by the aggrieved party.

Considering that the Tribunal is one of the largest ad hoc arbitration bodies in the world, and given that contract values often exceed several million dollars, analyzing the Tribunal›s perspectives and practices is crucial and informative. Some legal scholars argue that the Tribunal possesses international significance, and its precedents may be cited in other international legal disputes. The involvement of esteemed international legal scholars and arbitrators lends further authority to its rulings, establishing them as secondary sources of law, namely the opinions of legal experts. Despite the Tribunal being established over three decades ago, it continues to operate, indicating a substantial volume of complex cases, which distinguishes it from similar institutions.

1. Chapter One: Conception and Basis of the Principle of Contractual Compensation and Its Characteristics

In this chapter, we will explore the fundamental question: what is the principle of compensation for damages? What is its scope?

1.1. Section One: Concept of Full Compensation for Damages

In legal terms, a harm is an unlawful injury inflicted by one person upon another.[1] This understanding has long been established in both domestic and international legal systems, necessitating that due

1 Katouzian N, *Non-Contractual Obligations, Civil Liability, General Rules* (1st edn, University of Tehran Publications 2008) 242.

to the illegitimacy of harm, and for the sake of justice and order, all damages inflicted upon the injured party must be compensated fully. Partial compensation undermines the concept of justice.

Thus, compensation for damages is a response to breaches of contractual obligations and serves as a remedy for contractual duties. A remedy for breach of contract is effective and useful only when it compensates for all consequences of the violation of rights. This principle, known as the principle of full compensation for damages, is fundamental and rational. However, it is essential to clarify its precise meaning and limits. We can assure ourselves of the completeness of compensation by establishing a benchmark for evaluation.

The concept of full compensation for damages ultimately relates to the objective of such compensation:[1] when and by what criteria can we assert that damages have been fully compensated? In tort liability, the aim of compensation is to restore the injured party to the position they were in before the harmful act occurred. This means rectifying all consequences of the damage, thus achieving full compensation.

In the context of contractual liability, the precise meaning of the principle of compensation for damages corresponds to the question of whether the injured party is restored to the position they would have held had the contract been performed.[2] If the harmful act itself was the contract›s conclusion, compensation should aim to return the injured party to the state prior to the contract›s signing, especially in cases where the contract is deemed invalid. In such instances, full compensation requires restoring the injured party to their pre-contractual position.

However, if the breach of contract is not the act of concluding the contract, and the contract is validly executed, the purpose of compensation is to eliminate the repercussions of the harmful act, namely the breach of obligation. The injured party should be placed in a position as if they had fulfilled their contractual obligations.

Therefore, it is crucial to examine these two aspects carefully to identify the concept of the principle of full compensation for damages in each case:

1.1.1. A. The Principle of Compensation for Breach of Contract.

When a contract is formed, it is subject to specific enforcement mechanisms across all legal systems. Nonetheless, all systems respect contracts, establishing them as fundamental and inviolable.[3]

Consequently, since all contracts entail both financial and non-financial rights and benefits, any breach of obligation by either party that causes harm to the other must be fully compensated. Here, the contract›s lawful execution necessitates restoring the injured party to a situation as if the contract had been duly executed. This perspective ensures that all benefits derived legitimately from the contract are compensated, as returning the situation to its pre-contractual state would deprive the injured party of their rightful claims arising from a valid contract.

Thus, to achieve full compensation for damages, actions must be taken to ensure that the injured party can recover all lost benefits, without resulting in their situation being improved

1 Ranjbar M R, *Determining Damages Arising from Breach of Contract* (1st edn, Mizaan Foundation 2008) 22.
2 Ibid.
3 To examine the opinions in this regard, see: Seyed Mostafa Mohaghegh Damad, 'The Principle of Necessity in Contracts and Its Applications in Imami Jurisprudence' (2012) Journal of the Faculty of Law and Political Science, No 12.; Civil Code of Iran, art 219.; Civil Code of Iran, art 1134.; Sale of Goods Act 1979 (UK), s 52(1).

beyond what it would have been had the contract been performed. This issue presents both positive and negative aspects, which we will address.

1.1.1.1. Positive Aspect of the Principle of Full Compensation for Damages

This aspect of the principle of full compensation for damages means that the injured party should not find themselves in a worse position after compensation than they would have been had the obligation been fulfilled. The contract inherently provides benefits and advantages to the obligee. Additionally, indirect damages suffered by the obligee must also be compensated. Only in this manner can the principle of full compensation for damages be effectively applied, ensuring that the losses of the obligee are addressed.

1.1.1.2. Negative Aspect of the Principle of Full Compensation for Damages

The simple interpretation of this aspect of the principle is that compensation should not place the obligee in a better position or grant them any undue advantage.[1] The obligor should not be compelled to pay damages exceeding the actual harm suffered by the injured party. If this occurs, the payment would be considered punitive, which is a characteristic of criminal law. In private law, the goal is not punishment but rather the restoration of the injured party›s losses. Viewing the issue from this perspective leads to the following conclusions:

1. **Costs Incurred by the Injured Party**: The costs incurred by the injured party in entering into the contract or fulfilling their obligations, such as office expenses, banking fees, and travel costs, need not be compensated. Thus, safeguarding the interests and position of the injured party does not imply the elimination of their obligations and corresponding costs. If, due to other reactions, such as rescission or reduction of payment, the injured party recovers certain costs they incurred, these amounts should be deducted from their total damages.
2. **Entering into Unsuitable Contracts**: If a person enters into an unfavorable contract that weakens their position relative to before the contract was formed, such as purchasing a gold item whose market value subsequently decreases, the injured party cannot demand the original value of the obligation from the obligor due to the breach. Essentially, the damages incurred correspond to the value of the obligation, which in this case is less than the price paid. The goal is not to compensate for losses from an unsuitable contract but to address losses arising from the breach of obligation.
3. **Prohibition of Double Compensation**: This aspect also implies that no damage should be compensated more than once, even if the compensation is deemed self-evident. This can be referred to as the principle against double recovery.[2]
4. **Conclusion on Compensation Amount**: In determining compensation, not only should the damages from the contract be accounted for, but also the benefits the obligor gained due to the breach of contract. A fundamental condition for this consideration is

1 This matter is articulated in Article 9:502 of the Principles of European Contract Law as follows: The general measure of damage is such sum as will put the aggrieved party as nearly as possible into the position in which it would have been if the contract had been duty performed. Such damages cover the loss which the aggrieved party has suffered and the gain of which it has been deprived.

2 Katouzian, *Non-Contractual Obligations, Civil Liability, General Rules* (2008) 93-97.

the establishment of a causal relationship between the benefit obtained and the breach of obligation, meaning that had the breach not occurred, the acquisition of that benefit would not have been possible.[1]

1.1.2. B. Concept of the Principle of Full Compensation for Damages in Relation to Invalid Contracts

Various damages may arise from an invalid contract for both parties; however, these should not be classified as contractual damages. Contractual liability arises only when a contract has been properly executed. In cases where the contract has not been correctly formed, there is fundamentally no contract, and damages cannot be claimed under contractual liability. This raises the question: can compensation be sought under tort liability instead?

This question has several dimensions:

- **First Scenario**: In cases of invalid contracts, neither party may be at fault. In such instances, due to the absence of fault, neither party bears liability. This is analogous to contracts that are impossible to fulfill.
- **Second Scenario**: Both parties may share fault in the invalidity of the contract, having knowingly entered into the agreement. In this case, no liability attaches to either party, as both acted to their detriment, such as in the case of an unlawful contract.
- **Third Scenario**: Liability can be attributed to one party regarding the invalidity of the contract, such as in the case of a quasi-contract. Here, based on general principles of tort liability, the injured party can claim damages, as the harmful act is the very act of entering into the contract. Full compensation occurs when the injured party is restored to their position prior to the contract›s conclusion.

These assumptions can be clearly inferred from the principles found in the European Contract Law and the Principles of International Commercial Contracts.[2]

Consequently, unlike the situation where damages arise from a legitimate breach of obligation, in cases of invalid contracts, the injured party can claim all expenses incurred, including costs for entering into the contract, banking fees, travel expenses, etc.

Despite the differences in nature and objectives of damages in contractual liability and those arising from contract invalidity, it appears that the methods for calculating damages in both cases are closely related. In the latter situation, the opportunity for the injured party to enter into a valid contract has been lost.[3]

Now, it is essential to highlight how to distinguish between contractual liability and

1 See also: Subsection 1 of Article 7.4.2 of the UNIDROIT Principles of International Commercial Contracts, Ganj Danesh, 1999.; Article 75 of the Vienna Convention.

2 Subsection 1 of Article 4:117 of the Principles of European Contract Law stipulates: "A party who avoids a contract under this chapter may recover from the other party damages so as to put the avoiding party as nearly as possible into the same position as if it had not concluded the contract, provided that the other party knew or ought to have known of the mistake, fraud, threat, or taking of excessive benefit or unfair advantage."; Additionally, Article 18.3 of the UNIDROIT Principles of International Commercial Contracts provides: "Irrespective of whether or not the contract has been avoided, the party who knew or ought to have known of the ground for avoidance is liable for damages so as to put the other party in the same position in which it would have been if it had not concluded the contract."

3 G Treitel, *The Law of Contract* (Sweet & Maxwell, London 1995).

liability arising from the invalidity of the contract. Initially, the criteria for differentiation seem straightforward:

1. If a contract has been properly formed and the harmful act constitutes a breach of that contract, we classify it as contractual liability.
2. If the contract is fundamentally invalid and the harmful act is the contract itself, the liability pertains to tortious rather than contractual principles.

While these criteria are generally valid and sufficient, some cases can be quite complex.[1]

According to the United Nations Convention on Contracts for the International Sale of Goods, Article 4(1) pertains to the validity of contracts and does not explicitly address liability arising from contract invalidity.[2]

The European Principles of Contract Law also indicate that if one party declares the contract invalid, the other party may seek damages from them, ensuring that the party declaring invalidity does not gain a more favorable position than if the contract had never existed. This condition applies only if the other party was aware or should have been aware of errors, fraud, coercion, or unjust enrichment.

In the Principles of International Commercial Contracts, drafted by the International Institute for the Unification of Private Law, Article 18(3) states that regardless of the invalidity of the contract, the party aware of the invalidity or who should reasonably be aware is liable for damages to the injured party. They must restore the injured party to the position they held prior to the contract in order to achieve full compensation.

In light of these provisions, it appears that liability arising from breaches of contract can be accepted and is fundamentally based on fault. This fault must be attributed to the responsible party when they are aware or should reasonably be aware of the contract›s invalidity. Since the act of forming the contract itself constitutes a harmful act, full compensation must be provided to the injured party, restoring them to their pre-contractual position.

1.2. Section Two: Basis and Scope of the Principle of Full Compensation for Damages in Contractual Liability

In examining the basis of contractual liability, a fundamental question arises: does contractual liability, like contractual obligations, stem from the mutual consent of the parties, or is it entirely dependent on the will of the legislator, similar to tort liability?[3]

This question can be answered by stating that contractual liability is not solely governed by the will of the legislator or the parties; rather, it is a relative matter. Certain aspects are entirely within the legislator›s control, such as when a contract stipulates that a third party is responsible for paying taxes.[4] In this case, the obligation is influenced by both the legislator›s will and the parties' agreement.

1 Ranjbar, *Determining Damages Arising from Breach of Contract* (2008) 25.
2 Article 4: This convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this convention, it is not concerned with: A) the validity of the contract or of any of its provisions or of any usage; B) the effect which the contract may have on the property in the goods sold.
3 Katouzian, *Non-Contractual Obligations, Civil Liability, General Rules* (2008) 93.
4 Assuming that the condition has been validly established.

In the context of contractual liability, it cannot be precisely stated whether it is the will of the legislator or the will of the parties that prevails; instead, it is crucial to assess the extent and nature of each type of enforcement mechanism for contractual obligations. These enforcement mechanisms can be divided into two categories:

1. **Legal Remedies**: Legal remedies refer to the situation where, upon entering a contract, the parties may not consider how to address the failure of the other party to fulfill their obligations. The legislator thus seeks to identify a range of remedies arising from a breach of contract. If the parties do not specify remedies in the contract, the law will provide them. However, these legal remedies are generally subsidiary, allowing parties to waive or modify them within the contract, such as the right to rescind, the right to withhold performance, etc. A clear example of the close relationship between the will of the legislator and the parties is the inclusion of liquidated damages clauses, which will be discussed in detail in later sections.
2. **Contractual Remedies**: Sometimes, certain contractual remedies, after a period of application, might be recognized by the legislator as beneficial, thus formalizing them as legal remedies - this reflects the historical development of contractual liability in Iran.[1]

Some legal scholars argue that the current legal systems in many countries regard contractual liability as a legal remedy.[2] However, this interpretation should not be overstated, as these remedies exist alongside other enforcement mechanisms, such as specific performance, the right to rescind, etc., introduced by the legislator to better secure contractual obligations. In other words, these scholars believe that the primary source of contractual liability originates from the legislator›s will.

It is noteworthy that, as mentioned, these provisions are not necessarily mandatory and can be waived or altered. For instance, under English law, if the stipulated liquidated damages are excessively high compared to actual damages, that clause may be deemed unenforceable.[3]

Thus, if we fully accept the parties› will regarding compensation for contractual liability, it is possible that not all damages will be compensated. Conversely, if one subscribes to the view that contractual liability is a legal remedy, it could potentially compensate for all damages.

Therefore, what must be established in the parties› will, either explicitly or implicitly, is the limitation or waiver of full compensation for damages. However, it is not necessary to seek proof of the parties› intent to establish contractual liability.[4]

At times, various reactions occur in response to a breach of contract, and multiple responses may arise simultaneously. For example, in addition to seeking specific performance or rescission of the contract, the obligee may also request damages for delay in performance. The injured party must be restored to a position where their damages are fully compensated, without ending up in a better position. Some legal scholars believe that legal systems have not fully achieved this objective.

1 Ranjbar, *Determining Damages Arising from Breach of Contract* (2008) 94.
2 Ibid, 95.
3 Treitel, *The Law of Contract* (1995).
4 See Katouzian, *Non-Contractual Obligations, Civil Liability, General Rules* (2008).

For instance, in Iranian law and Imamite jurisprudence, the discussion of contractual liability has not addressed issues such as the formation and dissolution of contracts. Instead, it has focused solely on enforcing contractual obligations through means such as specific performance, the right to withhold performance, or the right to rescind and reduce the price. Thus, the subject of contractual liability and breaches arising from contracts has not been adequately examined.[1]

Several relevant discussions arise within international conventions, notably in Article 74 of the United Nations Convention on Contracts for the International Sale of Goods (CISG), which states:

> *«Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach fore saw or ought to have fore seen at the time of conclusion of the contract, in the light of facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract."*

While Article 74 does not explicitly state the principle of full compensation for damages, it has been interpreted by the secretariat of the Vienna Conference prior to the adoption of the convention, particularly in the official commentary on Article 70 of the 1978 draft (which later became Article 74), to embody the philosophy of full compensation. This interpretation suggests that if the obligated party had fully performed their obligations, the principle of full compensation for damages would apply. This concept has also been inferred from arbitration decisions based on this article, a point emphasized by some legal scholars.[2]

From Article 74 of the CISG, both the positive and negative aspects of the principle of full compensation for damages can be deduced.[3] A key question, however, is whether the foreseeable damages mentioned in this article include loss of profit.

In the Principles of International Commercial Contracts, the principle of full compensation for damages is explicitly articulated in Article 7(4)(2), which states that:

1. The aggrieved party is entitled to full compensation for harm sustained as a result of the non-performance. Such harm includes both any loss suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or harm.
2. Such harm may be non-pecuniary and includes, for instance, physical suffering or emotional distress.[4]

In the European Principles of Contract Law, although the phrase "principle of full compensation for damages" is not explicitly mentioned, Article 9:502 indicates that damages

1 Jafari Langroudi MJ, 'Contractual Liability' (1963) 1 *Legal Journal of the Ministry of Justice*.
2 C Massimo Bianca and Michael Joachim Bonell, *Commentary on the International Sales Law: The 1980 Vienna Sales Convention* (Giuffrè 1987).
3 Noori MA, *Principles of International Commercial Contracts* (1st edn, International Institute for the Unification of Private Law, Ganj Danesh Library 1999). [In Persian]
4 Shoariyan E and Torabi E, *Principles of European Contracts and Iranian Law* (Forouzesh Publication 2010). [In Persian]

should be awarded in such a way that the injured party is put in the position they would have enjoyed had the contract been fulfilled.[1]

Thus, in both the Principles of International Commercial Contracts and the European Principles of Contract Law, the principle of full compensation for damages is expressed more explicitly compared to the CISG. This underscores a consistent recognition of the need for comprehensive compensation in international contract law, aiming to ensure that injured parties can recover fully from losses attributable to breaches of contract.

2. Chapter Two: Compensation for Damages in the Tribunal

The Tribunal adheres to the principle of compensation for damages, asserting that when a contract is breached, the injured party is entitled to compensation that places them in the economic position they would have achieved had the obligations been fulfilled.

Another principle regarding compensation for damages in contracts is that the claimant is not entitled to damages that could have been avoided with reasonable effort. Therefore, if the injured party can demonstrate that the obligor had opportunities resulting from the breach that could have led to profits through reasonable efforts, that amount will be deducted from the sum that could have been claimed.

Breach of contract in the Tribunal has manifested in several ways:

- The obligor or the obligee unilaterally terminated the contract.
- The obligor and obligee rendered the contract void and refrained from continuing their collaboration.
- The parties mutually rescinded the contract.
- The contract has been rendered null and void.

In some cases, the contract is fundamentally breached, or even if it has not been breached, the obligor has performed actions beyond the contractual obligations. In such instances, based on the principle of unjust enrichment, the party that performed the extra work is entitled to reasonable compensation (quantum meruit).

In other situations, some contracts were completed, but invoices for work performed have not been paid. Alternatively, a contract may have been unilaterally breached or otherwise violated, with one or more invoices for completed work remaining unpaid.

The Tribunal has frequently noted that unrest in major cities constitutes classic force majeure conditions, which cannot be attributed to the Iranian government, thus absolving it from liability for damages. This principle applies between private parties as well, meaning that one party cannot claim damages due to disruptions in work resulting from force majeure, unless such conditions can be attributed to the other party's fault.

Moreover, the Tribunal has concluded in many cases that the ongoing force majeure conditions led to the termination of contracts between the parties, rendering many contracts impossible to fulfill by mid-summer 1979.

1 "The general measure of damages is such as will put the aggrieved party as nearly as possible into the position in which it would have been if the contract had been duly performed. Such damages cover the loss which the aggrieved party has suffered and the gain of which it has been deprived."

Another notable point is that the only case where a ruling was made in favor of the defendant based on the principle of fundamental change in circumstances was the *Questech* case (91-59-1).[1] In this case, the Tribunal ordered the defendant to pay the unpaid invoices, including profits up to the date of cancellation, as well as other costs to the claimant. However, future profits that the claimant might have gained from the continuation of the contract were not applicable here due to the changes in circumstances.

Other rulings from the Tribunal where loss of profit was deemed non-compensable due to cancellation should be distinguished based on the facts discussed in those cases, as they did not reference contractual conditions or exceptional circumstances like the current case. This is exemplified in cases like the *Pomeroy* case,[2] where loss of profit was not awarded due to the unique conditions of that case.

Regarding loss of profit, it is essential to note that the Tribunal has generally not awarded compensation for loss of profit in many cases. In rare instances, it has granted such claims, particularly when one party has demonstrated a state of readiness to perform, which the Tribunal recognized and subsequently awarded loss of profit. For instance, in the case of *Seismograph*,[3] since the contract amount was fixed, the Tribunal determined a profit margin of 10% based on the contract stipulations. The non-breaching party was to be placed in a position they would have occupied had the breach not occurred.

In relation to quantum meruit and the theory of unjust enrichment, this principle is widely accepted and codified in many jurisdictions. The principle prohibits unjust enrichment and is inherently flexible, as it aims to balance the situation between two parties, where one has caused damage to the other without justification. All circumstances must be considered in this evaluation.

According to this principle, compensation must be paid, aligning with the reality that the discussed actions are inherently unlawful. However, this cannot apply if it contradicts international law. In cases of unjust enrichment, there should not be a justification such as a contract with the other party that allows the injured party to claim damages based on that.

There is a divergence of opinion on the basis of calculating damages. The prevailing view seems to suggest that damages should equate to the benefits that the state has derived, and if the state has not gained any benefit, no compensation is payable.

Equity clearly mandates that the situation as it was must be taken into account. For this reason, international Tribunals do not maintain a uniform approach concerning significant circumstances that must be considered, including the amount of investment, the duration for which foreign investment could be utilized, and the benefits actually derived by the host country from the investment.

Another noteworthy point is that the Tribunal rarely, unlike many accepted conventions and commercial contract rules, has addressed bodily injuries resulting from contract termination, as outlined in Article 2(1) of the Statement on Claims Settlement.

The Tribunal employs various methods for compensating damages, including both monetary

1 IUSCT, *Questech, Inc v Iran* (180-64-1) Vol 9, 150-256.
2 IUSCT, *R N Pomeroy v Iran* (40-50-3) Vol 2, 564-592.
3 IUSCT, *Seismograph Service Corporation v NIOC* (420-443-3) Vol 22, 29-183.

and non-monetary remedies. It has utilized methods such as restitution of property, resale of goods (replacement transactions), providing equivalent goods, and monetary compensation for damages. Generally, the Tribunal has favored monetary compensation, particularly in the form of interest. Due to the importance and frequency of rulings, two branches of the Tribunal have specified a particular method for calculating interest. For instance, in the *Sylvania* case,[1] the Tribunal noted that, given the lack of a consistent and uniform practice, while branches typically acted uniformly in awarding interest based on damages from delayed payments, the Tribunal has never ruled in favor of compound interest. However, the rates applied by the Tribunal have rarely been identical.

The Tribunal accepts rates stipulated in contracts that have been mutually agreed upon by the parties, stating that unreasonable or usurious rates will not be applied (as seen in case No. 2-35-14).[2] If the interest rate is not specified in the contract, the Tribunal uses its discretion to apply rates it deems fair, typically ranging from 8.5% to 12%.

According to the First Chamber of the Tribunal, justice and fairness necessitate a consistent approach to awarding interest in the cases presented before this chamber. The rates established in contracts should generally be accepted by the Tribunal unless there are specific exceptional circumstances. If the interest rate is not specified in the contract, the Tribunal calculates the interest based on the amount that the winning party could have reasonably earned through a conventional investment in their country had they received the awarded amount promptly.

In the United States, six-month deposits are a type of investment, and their average interest rates can be sourced from an official and reliable source. The Tribunal notes that precedents exist in which interest awarded in individual and unique cases has been calculated based on the borrowing rates of banks in the claimant's country. Occasionally, the Tribunal has also utilized the prime lending rate, which reflects the rate charged to the most reputable bank customers in the United States.

However, given the circumstances of this Tribunal, the First Chamber emphasized the need for uniform treatment. Therefore, it is more appropriate to determine the interest rate based on the investment returns during the relevant period. To achieve this, interest on the awards can be calculated based on the rates of bank deposits that are generally available to all investors.

Comparatively, borrowing rates vary depending on the creditworthiness and reputation of borrowers, many of whom cannot secure loans at prime rates, and some may experience changes in creditworthiness over the relevant period. Additionally, not all parties suffering from delays in payment are actually borrowing. For these reasons, setting a generalized interest rate based on the prime rate for all awards is often seen as unrealistic.

The Tribunal points out that in many courts in the United States, a uniform interest rate is often applied due to legal requirements. It appears that statutory interest rates in many jurisdictions in the United States, while adjusted periodically according to changing financial and economic conditions, are generally lower than prime rates due to various legislative considerations, including delays in passing laws. Nevertheless, many law-makers and judges agree that applying such rates is generally fair.

1 IUSCT, *Sylvania Technical Systems, Inc v The Government of the Islamic Republic of Iran*, Case No 64.
2 IUSCT, *R J Reynolds Tobacco Company v Government of the Islamic Republic of Iran and Others* (Ruling No 2-35-14).

The fact that all American claimants in the Tribunal benefit from the guarantee provided by the security account established under the Algiers Accords can also be viewed as a justification for using a generalized investment return rate, even if, in a specific case, a claimant may have borrowed at a higher rate, as such guarantees are not typically available in most international rulings or domestic court decisions. However, some American arbitrators, including Mr. Holtzman, have raised objections to this perspective.

It is noteworthy that the average interest rate paid on six-month deposits in the United States from 1979 to the end of 1984 was approximately 12.12%, which corresponds to the relevant period in the *Sylvania* case.

In the *McCollough & Company* case (No. 3-19-225),[1] the Third Chamber of the Tribunal expressed that the award of interest, like other rulings made by the Tribunal, must be based on respect for the law, and in this regard, as in any other case, the governing law must be identified by the Tribunal according to the principles outlined in Article 5 of the Claims Settlement Statement.

Determining the governing law in this context requires the Tribunal to reference the practices followed by relevant judicial authorities. However, identifying the applicable law is challenging due to ambiguities and contradictions present in various domestic legal systems, international law, and commercial customs.

In most legal systems, if not all, when interest is awarded as part of compensation for damages resulting from a breach of contract, the applicable interest rates are typically determined based on statutory rates, unless specific exceptional circumstances exist. However, the rates determined in this manner can vary significantly across different legal systems. This variability is also evident in the determination of the date from which interest is calculated, which may depend on the legal system in question and the circumstances involved. This date could be tied to the date of the damage, the date of a formal payment demand, the court ruling date, or even another specified date.

This diversity is particularly pronounced in the context of the Iranian legal system following the Islamic Revolution, which, like certain countries adhering to constitutional principles, prohibited the payment of any interest. In contrast, the U.S. legal system typically awards interest, and although rates can vary significantly depending on the governing law, there seems to be a trend toward applying similar commercial interest rates.

The differences and variety in practices among international Tribunals regarding interest awards are likely even greater. International arbitration awards where interest has been granted or where very low rates have been determined tend to be somewhat outdated or pertain to non-commercial disputes between states. Consequently, the precedential value of such awards is limited, and it is difficult to extract any universal rule from them.

In recent years, the common practice in cases involving disputes between states or relevant governmental organizations and foreign companies - where the parties have directly referred their dispute to international Tribunals or through diplomatic protection - has shown a wide

1 IUSCT, *McCollough & Company, Inc v the Ministry of Post, Telegraph and Telephone, the National Iranian Oil Company and Bank Markazi*, Case No 89.

range of awarded interest rates. Notable examples indicate that awarded rates have ranged from 5% to 14.5%, with common rates around 7.5%, 8%, 9%, 10%, and up to 12%.

This variability is also reflected in the determination of the start date for calculating interest. In some disputes, the commencement date for interest has been set to when the obligation to pay became due or at least has a direct connection to the date the damage occurred. In other cases, the start date for interest has been declared as the date of the ruling, the date of notification, or a specified time after the ruling. In some instances, reference has been made to the law governing the contract in question. In other cases, no specific legal framework has been cited, and the determination of the interest calculation date has been left to the discretion of the arbitrator.

In most cases, simple interest has been calculated, but there have been instances where compound interest has been awarded. However, the Tribunal has never awarded compound interest. Additionally, sometimes, a percentage has been added to the interest rate due to inflation.

Given such a diverse array of practices, it is challenging to arrive at specific conclusions. Nonetheless, the Tribunal can conclude that, contrary to the well-developed rules governing compensation for damages arising from breach of contract - where the principle of full compensation is usually applied - there are no uniform regulations regarding interest in international arbitration, and no similar rules concerning interest rates or calculation dates have been established by the Tribunal's practice. The frequent use of the term "fair" in determining the selected rate and recurrent references to "the discretion of the arbitrator" highlight this point.

However, the lack of a uniform rule does not imply the absence of general principles. On the contrary, two general principles or guidelines can be inferred from common practices in international arbitration, which are conceptually broad but require careful and nuanced application.

The first principle is that, under normal circumstances, particularly in commercial disputes, interest is awarded to the winning party as compensation for delays in payment concerning the awarded amount. However, this delay varies according to the date recognized as the obligation to pay. The obligation date could be the date of the original damage, the settlement of the debt, the date of a formal payment demand, the start date of arbitration or litigation, the date of the arbitration ruling, or the date when a judge or arbitrator's decision should logically have been executed.

The second principle is that the interest rate must be reasonable, taking into account all relevant circumstances, and the Tribunal has the right to consider such circumstances under the authority granted to it in this regard.

The circumstances that should be considered in determining a "reasonable" or "fair" rate are numerous. Given the multitude and complexity of these circumstances and the need to assign appropriate weight and credibility to each, international or transnational Tribunals typically refrain from enumerating them in their rulings. This approach likely aims to avoid excessive elaboration.

Nevertheless, based on the limited guidelines derived from the practices of the Tribunal, the following circumstances can be identified for determining interest rates:

1. Any contractual conditions that may apply in setting the interest rate.
2. Regulations and principles of the governing law of the contract.
3. The nature of the facts giving rise to the damages.
4. The nature or amount of the awarded compensation, especially if it includes loss of profit or recoverable costs.
5. The knowledge the breaching party may have had regarding the financial consequences of their breach for the other party.
6. Common rates in relevant markets.
7. Inflation rates.
8. etc.

These principles, inferred from the common practices in international arbitration, are considered part of commercial law and international law, in the context of Article 5 of the Claims Settlement Statement. They reflect the nature of the international Tribunals that apply them and the disputes presented, which are viewed as a form of commercial customary law, gaining particular relevance in relation to this Tribunal.

However, the Tribunal must also take into account its own characteristics when applying these principles. The most significant of these is that the Tribunal, unlike other transnational arbitration bodies formed under a contractual clause to resolve commercial disputes, is established by an international treaty and derives its jurisdiction from that treaty, encompassing a vast number of cases. Thus, the applicable law must be determined by the Tribunal according to the conditions outlined in Article 5 of the Claims Settlement Statement. Additionally, given the current structure of the Tribunal, the time lapse between the initial petition and the issuance of the final ruling can be lengthy and, in many cases, exceeds the usual delays seen in international arbitration or domestic litigation. Conversely, enforcing awards in favor of U.S. nationals, who benefit from the full enforcement guarantees provided by the security account under Article 7 of the General Statement, requires no waiting or formalities.

The aforementioned principles have been applied by the Tribunal, which typically establishes a moderate interest rate under the terms «fair» or «reasonable,» leaving the selection to the discretion of the arbitrator. As seen in the ruling in the *Sylvania* case, the chambers of the Tribunal have not always reached the same conclusions. The variation in rates applied by the chambers can be attributed to the differing circumstances of each case.

Moreover, the diversity of cases referred to the Tribunal makes it challenging to apply a fixed and immutable interest rate across all cases. Therefore, it is preferable for the start date of interest calculations to be determined on a case-by-case basis, considering all relevant factors.[1]

Conclusion

The principle of compensation for damages is a widely accepted tenet in law, requiring that all damages incurred by the injured party be compensated. This study examined contractual damage compensation in the Iran-U.S. Claims Tribunal. The Tribunal often delineates that unrest in major

1 Ziaie Tabatabaie HR, *Methods of Contractual Damage Compensation in the Iran-U.S. Claims Tribunal* (Master's Thesis, Islamic Azad University, Central Tehran Branch, Summer 2014). [In Persian]

cities constitutes force majeure conditions that cannot be attributed to the Iranian government, thus relieving it from liability for damages.

The Tribunal has employed both monetary and non-monetary methods for compensation due to contract breaches. It has utilized methods such as restitution of property, resale of goods, providing equivalent goods, and monetary compensation. While the Tribunal has occasionally applied non-monetary compensation methods, it predominantly follows monetary compensation through interest.

After reviewing the Tribunal›s awards up to 2009 regarding contractual compensation methods, it is evident that although the Tribunal rarely used non-monetary methods for compensating damages from contract breaches, it primarily used monetary compensation in the form of interest. The conclusion is that in most cases, the Tribunal has awarded interest to compensate for damages, adhering to monetary compensation methods.

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