



Cooperation and Conflict
Between Iran and America
At The Iran-United States Claims Tribunal

Submitted by Maryam Moradi to the University of Exeter as a Dissertation for
the Degree of Doctor of Philosophy by Research
March 2010

This thesis is available for library use on the understanding that it is copyright material and that no quotation from the thesis may be published without proper acknowledgement.

I certify that all material in this thesis which is not my own work has been identified and that no material has previously been submitted and approved for the award of a degree by this or any other university.

Acknowledgement

I would like to express my thanks to Professor David J. Armstrong, my supervisor at the Department of Politics for his excellent advice, good supervision, many corrections and comments. I am extremely grateful to him for his tremendous support and encouragement for my field trip to The Hague. My acknowledgement also goes to Dr. John Heathershaw, my second supervisor, who gave his helpful comments. I must express my thanks to my external examiner Dr. Shahira Samy and my internal examiner Prof. Mick Dumper for their corrections, comments and help. I would also like to thank Exeter University, the Department of Politics, the Main Library, and the Law Library of Exeter University for the services and facilities they provided during my study. I would also like to appreciate the Peace Palace Library of the Netherlands for the service and sources they provided during my stay in The Hague. My appreciation also goes to the Library of the Bureau for the International Legal Services of the Islamic Republic of Iran, and the Iran-United States Claims Tribunal.

Abstract

This dissertation aims to examine The Iran-U.S. Claims Tribunal, the largest mechanism in the history of international arbitration, located in The Hague. The central thesis considered is the unique nature of the Tribunal as embodying elements of both conflict and cooperation at a time of considerable and ongoing hostility between Iran and the United States over various issues. Iran and America, following World War II, set up a unique relationship. This close cooperation resulted in antagonism after the Islamic Revolution in 1979; the American diplomats were taken hostage, and a number of multi-billion dollar contracts and transactions were terminated. Several avenues were sought to resolve the problem. Finally, the Algerian government stepped in as an intermediary to resolve the issue. Iran and the United States agreed to establish the Tribunal in 1981. The level of confrontation between Tehran and Washington was so strong that the Tribunal suspended its operation for months. The Tribunal not only managed to survive, but it also made it possible; as a safe haven, as a legitimate forum and as a joint embassy for the parties, to extend their day-to-day cooperation for almost thirty years.

How and under what conditions have Iran and America, labelled by each other as the "Axis of Evil" and the "Great Satan" been able to cooperate in the absence of diplomatic relations? How do the Agents of an allegedly "World-devouring America" and the "Terrorist sponsoring Iran" meet face to face in an institution which itself is the product of severe enmity? All such questions could be answered by the unique nature of the Tribunal: its decisions are based upon "political exigency" and cultural expediency "rather than legal foundations." Two simultaneous forces of conflict and cooperation have been in process: at a time when the American navy was raiding the Iranian oil platform in the Persian Gulf, a big case amounting to billions of dollars was being negotiated at the Tribunal forum through an out-of court settlement process. At the time when this dissertation is produced,

the same contending forces of discord and collaboration are in operation: on the one hand there exists Iran-US nuclear standoff on the international level, and on the other hand certain multi-billion dollar oil and Foreign Military Sales (FMS) are decided at the Tribunal.

The Tribunal premises have been used as a forum for "deliberation" on major legal and political disputes. It has been both praised and blackballed. At one extreme, it has been regarded as "a gold mine of information" and at the other extreme its rulings are not considered to be applicable in other financial disputes because of the "political compromise within the Tribunal." Iran and America have found it necessary, under the condition of uncertainty, to make concessions to ensure the integrity of the Tribunal and the latter in turn has equipped itself with a proper strategy of survival by establishing its own rules and procedures. Around four thousand cases have been brought before the Tribunal, with each case involving various conflicts of interest. In all of those issues, the forces of cooperation have prevailed. By resolving those cases, the Tribunal has achieved its fundamental objectives: conflict resolution by peaceful means. The Tribunal will cease to exist only when Iran and America open diplomatic relations.

List of Contents

	Page
1 Title Page	1
2 Acknowledgement	2
3 Abstract	3
4 List of contents	5
5 List of tables	10
6 Abbreviations	11
7 Chapter One: Introduction	14
I The Structure of the study	14
II Statement of the problem	15
III Objectives	16
IV Major Question	17
V Main sub-research question	18
VI Central thesis and assumptions	18
VII The background to the establishment of the Tribunal	20
VIII Methodology, concepts and theoretical approach	21
IX Explanation of the selection of celebrated cases	47
X Research limitations	48
XI Literature review	50
XII Conclusion	58
XIII Notes	60
8 Chapter Two: Historical Context	63
I Introduction	63
II The Origins of Iran-US relations	65

III World War II Period and Iranian-American relations	67
IV Post World War II Relations	68
V Fall of Mosadeq and beginning of a new era	73
VI Carter's human rights policy	81
VII Islamic Revolution	82
VIII The problem of recognition	90
IX Conclusion	90
X Notes	92
9 Chapter Three: Tribunal Formation	95
I. Introduction	95
II American hostage crisis	96
III Rescue mission and freezing assets	97
IV Further Legal and Diplomatic pressure	101
V Channels to negotiations	102
VI Money talks	103
VII Iranian political demands and the Algerian channel	105
VIII The Tribunal structure, procedure, jurisdiction, and institutional matters	110
a. Structure	110
b. Procedure	111
c. Jurisdiction	112
d. Institutional matters	114
IX Conclusion	114
X Notes	117
10 Chapter Four: Arbitration and the Tribunal's Nature	120
I Introduction	120
II The Origins of Dispute Resolution	124

III The Nature of the Tribunal	130
a. Contributive and non-contributive nature	131
b. Review of the literature on nature	132
c. Analyzing the nature	135
d. Secrecy rule as a constraint	139
IV Conclusion	140
V Notes	145
11 Chapter five: Conflict over Judges	148
I Introduction	148
II The issues of challenge, replacement & resignation	150
III The challenge procedure	151
IV Composition	155
V Challenge to Judge Mangard & Judge Enayat's Resignation	157
VI Physical Attack on Judge Mangard	161
VII Resignation of Judge Bellet and Judge Sani	167
VIII Resignation of President Lagergren-January 1, 1984	170
IX The Challenges to Judge Briner	172
X Judge Ansari and Khalilian Resign, challenge of Mr. Noori	176
XI Challenge of Judge Arangio- Ruiz	177
XII Challenge of Bengt Broms	177
XIII Second challenge of Judge Broms	178
XIV Conclusion	179
XV Notes	182
12 Chapter Six: Conflict over Dual Nationality, and Compensation	185
I Introduction	185
II Dual nationality under international law	186

III The Principle of dominant and effective nationality	189
IV Conflict in dual nationality cases	190
V Compensation for the taking of alien property	204
VI Traditional standard of compensation	205
VII Conflict over the Traditional Standard of compensation	206
VIII Conflict over compensation at the Tribunal	207
IX Conclusion	213
X Notes	215
13 Chapter Seven: Cooperation on Substantive Issues	218
I Introduction	218
II Cooperation on the terms of the Accords	220
III Finance and banking	225
IV Settlement agreement	228
V Awards on agreed terms	229
VI Small claims	237
VII Lump Sum Settlement	239
VIII Interim Measures	241
IX Conclusion	247
X Notes	249
14 Chapter Eight: Cooperation on Delicate Issues	253
I Introduction	253
II Awards in favour of Iran or its nationals	255
III Indirect claims	258
IV Jurisdictional effect of Iranian forum selection clauses	259
V The Shah's Assets	265
VI U.S. Hostages v. Iran	267

VII Strategic cooperation & Iran-Contra Affair	269
VIII Counterclaims	273
IX The Security Account as a satisfaction means	277
X Conclusion	283
XI Notes	289
15 Conclusion	294
16 Appendices	302
a. Appendix One	303
b. Appendix Two	305
c. Appendix Three	314
d. Appendix Four	320
17 Glossary	338
18 Bibliography	340