

## The Legal Ground of Applying General Principles of Law in the Iran-United States Claims Tribunal (Original Research)

Tavakol Habibzadeh\*  
Sajad Fazlzarandi\*\*

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### Extended Abstract

The Iran-United States Claims Tribunal (IUSCT) was established in 1981 as part of a crisis resolution following the U.S. Embassy staff incident in the relations between Iran and the United States. The significance of the precedent set by the Tribunal in the field of international arbitration cannot be denied, as it encompasses a large number of claims on various subjects, and examining its different dimensions is of great importance. Determining the applicable law is a necessary step in the proceedings of international tribunals during the dispute settlement process. Accordingly, the Iran-United States Claims Tribunal has introduced a comprehensive system to determine the applicable law in Article V of its founding document, i.e. the Claims Settlement Declaration (CSD). In this regard, Article V of the Claims Settlement Declaration grants the tribunal broad discretion to choose the applicable law. This grant of extensive freedom to the tribunal in determining the applicable law is proportional to the diversity and extent of the issues that are under the jurisdiction of the tribunal; Otherwise, determining the applicable law would have been very difficult. One of the consequences of the discretion granted to the tribunal in Article V of the Claims Settlement Declaration is that the tribunal has frequently invoked general principles of law in its decisions by relying on this provision. General principles of law are, in fact, principles invoked in the absence of other positive rules to prevent a judge or arbitrator from facing a legal vacuum or *non-liquet*. These principles play the same role in international law and are recognized by

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\* Associate Professor of International Law, Faculty of Law, Imam Sadiq University, Tehran, Iran. [habibzadeh@isu.ac.ir](mailto:habibzadeh@isu.ac.ir)

\*\* Corresponding Author, Phd student in International Faculty of Law, Shshid Beheshti University, Tehran, Iran. [sajad.fazlzarandi@gmail.com](mailto:sajad.fazlzarandi@gmail.com)



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civilized nations. They comprise principles derived from national legal systems and formed within the international legal system. However, this freedom of choice does not imply permission for the Tribunal to decide *ex aequo et bono* or based on other non-legal criteria. Rather, according to the tenor of Article V, the tribunal must render its decisions on the basis of respect for law. In this regard, all decisions of the tribunal must be based on appropriate legal justification. The primary question addressed in this article is the legal basis upon which the tribunal has applied general principles of law in its proceedings. This article, employing a descriptive-analytical method and evaluation of article V, the Tribunal's precedents and related doctrine, concludes that the Tribunal has appropriately applied general principles of law as a source of international law in cases of an international character. In the field of disputes with an international character—such as the determination of state responsibility, and the implementation or violation of treaties—only international law can be regarded as the law that states are obliged to comply with. This is because international law is the only set of rules and principles that can limit the state sovereignty. However, international law cannot be considered as the governing law in commercial claims related to contract implementation, even though a major part of the Tribunal's use of the general principles of law has been in this category of claims. After examining various bases for determining the applicable law in this regard—including contractual law, *lex fori*, transnational law, and *lex mercatoria*—this article concludes that none of these frameworks is entirely suitable for the unique status of the Claims Tribunal. This is because the Iran-United States Claims Tribunal, is, on the one hand, an international tribunal with the characteristics of an international tribunal, but on the other hand, its jurisdiction has been extended to include private and commercial claims. Therefore, it cannot be treated as a typical international commercial arbitration subject to theories such as the *lex arbitri* or *lex mercatoria*, nor can international law be considered to govern these types of commercial disputes due to their nature. Consequently, the tribunal has appropriately resolved this challenge by resorting to general principles of law, not as a source of international law but as an independent body of principles governing commercial relations. In some cases, the tribunal has applied general principles of private international law in determining the law governing the contract, thereby indirectly using general principles of law in resolving the dispute. However, what distinguishes the Tribunal's practice is that in numerous cases, it has also directly referred to general principles of law in the merits of the case and applied them to resolve the dispute. This is because the tribunal did not consider itself bound by any specific domestic legal systems and, when appropriate, directly referred to general principles of law. The application of general principles of law in this way has been a turning point in international commercial arbitration, escaping the arbitrator from

traditional limitations in determining the applicable law. The conclusion of the article is that the court has considered the general principles of law as an independent set of principles governing the contract and commercial relations. These principles also include the principle of autonomy, choice-of-law rules, and other principles that have been recognized by most internal legal systems.

### keyword

Iran-United States Claims Tribunal, Claims Settlement Declaration, International Law, General Principles of Law, Applicable Law

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