



# THE STANDARD OF STATE CONTROL IN ATTRIBUTING THE CONDUCT OF NON-STATE ACTORS IN INTERNATIONAL LAW: A REVIEW OF THE PRACTICE OF THE IRAN-UNITED STATES CLAIMS TRIBUNAL

SARA REZAEI<sup>1</sup> | MOSTAFA FAZAEI<sup>2</sup>

1 Corresponding author, Ph.D. Candidate university, Iran. | [sara.rezaei@stu.qom.ac.ir](mailto:sara.rezaei@stu.qom.ac.ir)

2 Ph.D. Professor Department of International Law, Law faculty, University of Qom, Iran. | [m.fazayeli@qom.ac.ir](mailto:m.fazayeli@qom.ac.ir)

## Article Info

### Article type:

Research Article

### Article history:

Received

16 December 2024

Revised

1 March 2025

Accepted

18 April 2025

Published online

17 December 2025



[https://ijicl.qom.ac.ir/article\\_3786.html](https://ijicl.qom.ac.ir/article_3786.html)

### Keywords:

Iran-United States Claims Tribunal, State Authority, Attribution, International Responsibility, Revolutionary Movement.

## ABSTRACT

The attribution of conduct to a state in international law, particularly in international claims, is a fundamental and complex subject that determines how states are held accountable for the actions of non-state entities. While the general principle is to attribute the conduct of state organs to the state, under specific circumstances, the conduct of non-state actors may also be attributable to the state, contingent upon the state's control or direction over those entities. The standard of control, particularly in the practice of the Iran-United States Claims Tribunal (IUSCT/ Tribunal), is a critical aspect in determining state responsibility. The IUSCT maintains that for a state to be held responsible for the actions of non-state entities, it must be proven that the state exercised effective control over those actions. This control requires an examination not only of the mandates and statutes of the non-state entities but also proof of the state's direct influence on their operations. In cases involving the Islamic Revolutionary Committees and private entities, the Tribunal has considered clear indications of state responsibility, especially when tangible state control and direction have been established. For instance, in conditions of chaos such as during a revolution, a state cannot evade its responsibility by citing the prevailing disorder; however, at the same time, for the acts of private entities to be attributable to the state, mere state ownership is insufficient. The Tribunal emphasizes that it must be proven that the actions of the non-state entities were carried out pursuant to the state's instructions or under its direction. In summary, the IUSCT strongly emphasizes the necessity of "effective control" and a causal link between this control and the violation of international law to prevent the undue imposition of responsibility on states.

**Cite this article:** Rezaei, S., & Fazaeli, M., (2025). The Standard of State Control in Attributing the Conduct of Non-State Actors in International Law: A Review of the Practice of the Iran-United States Claims Tribunal, *Iranian Journal of International and Comparative Law*, 3(2), pp: 30-45.



© 2025

"Authors retain the copyright and full publishing rights"

[10.22091/ijicl.2025.11928.1126](https://doi.org/10.22091/ijicl.2025.11928.1126)

Publisher: University of Qom

## Table of Contents

Introduction

1. The Standard of Control for Attributing the Conduct of Non-State Actors to the State in International Law: Examining Dimensions and Conditions

2. The Impact of Establishing the Control Threshold in the Practice of the Iran-United States Claims Tribunal

3. The Threshold of Control: An Indicator for Attributing the Conduct of Non-State Entities to the State

4. The Standard of Control in State Ownership of Non-State Actors

5. The Standard of Control in the Management of Non-State Actors

Conclusion

## **Introduction**

Revolutions, uprisings, and public protests that have proliferated over the past decade have once again created conditions in which issues such as the exercise of state authority in the absence of official authorities or the attribution of the conduct of successful revolutionary movements can once again be raised in practice. Furthermore, the attribution of the acts of terrorist groups has been one of the most challenging topics in international law for at least the past decade, a major part of which is based on the issue of attributability. Therefore, this article, as its title also suggests, intertwines two areas of international law, the importance of neither of which can be doubted. On one side lie the rules for attributing international responsibility to the state, over which, at least until now, the shadow of time's passage has not heavily loomed; and on the other side stands the most important and influential contemporary international arbitral tribunal, namely the Iran-United States Claims Tribunal (IUSCT/ Tribunal).

The central question of this article is, considering the purpose of establishment of the Iran-United States Claims Tribunal, namely, the legal settlement of disputes between the two governments and the nationals of Iran and the United States, how has the practice of this body been regarding the standard of control for attributing the conduct of non-state actors to the state? Given the complexities of conducting case studies, assessing the impact of judicial and arbitral practice in the field of international responsibility is a difficult task. This difficulty is compounded when the body in question is the IUSCT, where political considerations have sometimes overshadowed legal issues. The core of the attribution rules in the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (ILC ARSIWA, 2001) is focused on determining which actions and conducts should be considered as acts of the state. The aim of the subsequent discussion is also to examine the circumstances under which the IUSCT has considered certain conduct to be an act of the state.



# 1. The Standard of Control for Attributing the Conduct of Non-State Actors to the State in International Law: Examining Dimensions and Conditions

The attribution of responsibility to the state is one of the fundamental issues in international law, playing an essential role in determining the international responsibility of states for the breach of their obligations. According to the general principles of international law, whenever a state commits a breach of an international obligation, its international responsibility is engaged, and the responsible state is obliged to compensate for the damages resulting from its wrongful act. However, determining which acts are attributable to the state and thus engage its responsibility is a complex matter requiring careful examination. Establishing a causal link between the act or omission and the injury suffered is a necessary condition for attributing responsibility to the state, but it is not sufficient on its own. In other words, it must first be proven that the alleged injury resulted from a specific act or omission. Then, it must be examined whether this act or omission is attributable to the state or not.<sup>1</sup> According to Article 1 of the ARSIWA, a state is responsible only for the internationally wrongful acts (IWA) of “itself”.<sup>2</sup> Since the state is a juridical person and cannot act directly, the IWAs of the state are in fact the acts or omissions of persons who are in some way connected to the state. Article 4 of the ARSIWA states a general principle in this regard: The conduct of any state organ shall be considered an act of that state under international law, provided that organ was acting in that capacity.<sup>3</sup> This principle includes all state organs, whether legislative, executive, judicial, or otherwise, and at whatever level of government (central, local, etc.). Thus, the wrongful acts of a judge, a police officer, a soldier, or any other state official are attributable to the state and engage its responsibility.

The fundamental principle is that a state is responsible only for the conduct of its own organs. However, in certain exceptional cases, a state may also be held responsible for the acts of private persons. Articles 5 to 11 of the ARSIWA enumerate the exceptional cases in which the state is responsible for the acts of private persons. For example, if the state entrusts a specific function to a private person and that person commits a wrongful act in the course of performing that function, the state may be held responsible. Article 8 articulates one of the most important cases for attributing responsibility to the state for the acts of private persons: The conduct of a person or group of persons shall be considered an act of a state under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that state in carrying out the conduct. In other words, if the state is in some way involved in the commission of the wrongful act by the private person, the responsibility for that act is attributable to the state. The direction and control by the state qualifies the general principle of the “personal nature of state responsibility” and expands its

1 Seyyed Ghasem Zamani, ‘The Place of the Principles and Rules of International Responsibility of States in the Oil Platforms Case’ in *The Judgment of the International Court of Justice in the Oil Platforms Case* (Research Center of the Islamic Consultative Assembly, Tehran 2015) 100 [In Persian].

2 Ian Brownlie, *System of the Law of Nations: State Responsibility (Part 1)* (Clarendon Press 1986) 37.

3 International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, Text and Commentary* (tr A Ebrahim Gol, Shahr-e Danesh, Tehran 2023) 26 [In Persian].



scope of liability. The term “*de facto* organs” is used to explain Article 8.<sup>1</sup> This means that if a private person or group is in fact acting under the control and direction of the state, it is considered tantamount to a state organ and its acts are attributable to the state. However, the ILC did not use this term in the commentary to the ARSIWA and preferred to emphasize the concepts of “control” and “direction”.<sup>2</sup>

The perpetrator’s identity as a state entity is, in itself, sufficient for responsibility to be attributed to the state. However, concerning non-state entities, another link between the state and the perpetrator must be proven, such as the state’s direction and control over private persons. It is noteworthy that the ILC has not set any specific threshold for this direction and control. Therefore, determining the degree of control and direction necessary for attributing responsibility to the state is a matter that must be examined on a case-by-case basis, considering the specific circumstances of each case. Ultimately, attributing responsibility to the state is a complex and multifaceted issue that requires careful examination of the conditions and circumstances of each case. Nevertheless, by adhering to general principles and abiding by the ARSIWA, a better understanding of this subject can be achieved, and steps can be taken towards determining the international responsibility of states for the breach of their obligations.

International judicial bodies have addressed the attribution of state responsibility in various cases and have considered different criteria for determining the threshold of “control.” These criteria and differing approaches have been shaped by the specific circumstances of each case and show that the theories of “effective control” and “overall control” are among the most important concepts in this area. In the *Nicaragua* case (1986), the International Court of Justice (ICJ/ Court) considered the criterion of “effective control” as the basis for attributing responsibility to the United States government for its support of the operations of *contras* forces in Nicaragua. The Court emphasized that for the United States to be held responsible, it had to be proven that the country exercised effective control over those specific military or paramilitary operations during which the legal violations occurred. The Court stressed that mere financial and logistical support is insufficient for attribution and that practical and continuous control must be proven.<sup>3</sup> In the *Tadić* case, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY), unlike the ICJ, used the criterion of “overall control” and stated: “For the acts of private persons to be attributed to a state, it must be proven that these persons acted under the control of that state. The standard for this control may vary depending on the circumstances of each case. In international law, a high threshold for the control test is not required in all circumstances.”<sup>4</sup> Here, the Tribunal deemed the overall control standard sufficient and stated that the intensity and degree of control could be lesser or greater in different cases. This approach provided a broader concept of attribution compared to the effective control theory.

1 Jörn Griebel and Milan Plücker, ‘New Developments Regarding the Rules of Attribution? The International Court of Justice’s Decision in *Bosnia v. Serbia*’ (2008) 21 *Leiden Journal of International Law* 601.

2 Marko Milanovic, ‘State Responsibility for Acts of Non-State Actors: A Comment on Griebel and Plücker’ (2009) 22 *Leiden Journal of International Law* 307, 314.

3 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14, 109.

4 *Prosecutor v Tadić* (Judgment) ICTY-94-1-A (15 July 1999), para. 117.



In the *Bosnia and Herzegovina v. Serbia and Montenegro* case (2007), the ICJ once again examined the “effective control” criterion as the threshold for attribution. The objective was to determine whether the acts of the Serb paramilitaries during the genocide could be attributed to the state of Serbia. Arguing that the Serbian government did not exercise effective control over the actions of the paramilitaries, the Court absolved Serbia of responsibility for the genocide.<sup>1</sup> This case reaffirmed the stringent effective control criterion. The European Court of Human Rights, in a case,<sup>2</sup> addressed the issue of the expulsion of applicants by British Railways, which was carried out under domestic laws and an agreement with trade unions. The Court declared that the United Kingdom was responsible not because it was the employer of the railways, but because it had legislated and legitimized this practice. This decision demonstrated that even actions stemming from a country’s domestic laws can engage the international responsibility of the state.

In general, international judicial bodies consider different thresholds for attributing responsibility to the state, depending on the circumstances and requirements of each case. While the ICJ usually adopts a stricter approach with the “effective control” criterion, the ICTY facilitated the process of attribution with its “overall control” approach. These differences indicate the adaptation of legal rules to the practical and political realities of each case. However, in all instances, the strength of the link between the state and the private person or group continues to play a fundamental role in determining responsibility.

## 2. The Impact of Establishing the Control Threshold in the Practice of the Iran-United States Claims Tribunal

In the cases before the IUSCT, the concept of state “control” has extended beyond mere share ownership or the appointment of managers to examine the degree and manner of the state’s influence over the conduct of non-state legal entities. Adopting a realistic approach, the Tribunal has sought to determine whether the acts and conduct of these entities, by virtue of their close connection to the state, are attributable to it.

In the case of *Starrett Housing Corporation v. Iran*, the Tribunal, through a broad interpretation of the concept of “expropriation,” considered the appointment of a temporary manager for the “Shah Goli” company by the Ministry of Housing as an instance of indirect taking (creeping nationalization), despite the absence of an explicit nationalization order.<sup>3</sup> The Tribunal argued that this action had deprived the claimant of the right to use, effectively control, and enjoy the benefits of its property. This case demonstrates that the Tribunal considers not only direct expropriation but also any unreasonable measure that prevents the use, enjoyment, or disposal of property as tantamount to expropriation.

The lawyers for the Government of Iran in this case attempted to argue, by citing the relevant law concerning the appointment of temporary managers, that the purpose of this action was to prevent the closure of economic units and preserve employment, and that there

1 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43, paras. 220-230.

2 *Young, James and Webster v United Kingdom* App no 7601/76; 7806/77 (ECtHR, 13 August 1981).

3 *Starrett Housing Corp v Government of Islamic Republic of Iran* (1983) 4 Iran-US CTR 122.



was no intent to expropriate. They also argued that the temporary manager had duties similar to an agent towards a principal and was considered a trustee.<sup>1</sup> However, the Tribunal did not accept these arguments and, emphasizing the practical impact of the appointment of the temporary manager on the claimant's property rights, ruled in favor of state responsibility.

In similar cases, including *Phelps Dodge*, while understanding the government's reasons for adopting measures to protect its interests, the Tribunal held the government responsible for paying compensation for the losses incurred.<sup>2</sup> This approach indicates that the Tribunal holds the state responsible for compensating damages resulting from the deprivation of property rights, even if there are justifiable reasons for a governmental decision.

In general, the IUSCT utilizes criteria such as *the degree of dependence*, *the manner of direct or indirect control*, and *the practical effects of the state on the decision-making of private entities* to determine the extent and manner of state control over private persons. The purpose of this examination is to determine whether the acts and conduct of these persons were so closely supervised and controlled by the state that this behavior can be linked to the state and its responsibility engaged.

The Tribunal's approach in this regard has established a significant precedent in which the surrounding circumstances of state control over private institutions and their degree of connection to state interests are carefully examined. This practice shows that the acts of private persons are attributed to the state only if significant control by the state over them can be established. The Tribunal has issued similar awards in some cases, including *TAMS* and *Clem M. Food Corp.*, providing a specific framework for the legal attribution of the acts of private persons to the state. In some Cases,<sup>3</sup> the Tribunal meticulously applied these criteria and sought to establish the government's connection to the companies based on the facts of the case.

Furthermore, the Tribunal in some instances has referred to the prior positions of the parties, including the Government of Iran in US domestic courts, and has attempted to use the inconsistency of these positions to advance claims.<sup>4</sup> Prior to signing the Algiers Accords, Iran had taken positions in US courts that were inconsistent with the arguments it presented before the Tribunal. Specifically, in defending against claims filed by Americans in US domestic courts against entities controlled by the Iranian government for loss of their interests, Iran claimed that these entities were in fact owned by the Government of Iran and asserted immunity from legal proceedings based on the principle of sovereign immunity. The claimants before the Tribunal succeeded in highlighting this position taken by Iran in US domestic courts and used it as one of the grounds for holding the Government of Iran liable.

Such examinations demonstrate the importance of precise criteria and the establishment of clear rules for distinguishing the acts of private persons from state conduct, which has played a key role, particularly in claims concerning the taking or expropriation of property. For this reason, in some of its awards, while understanding the special circumstances that

1 *Starrett Housing Corp v Government of Islamic Republic of Iran* (n 10) 136.

2 *Phelps Dodge Corporation v Iran* (1986) 10 Iran-US CTR 121, 126.

3 *Starrett Housing Corp v Government of Islamic Republic of Iran* (n 10) 180.

4 Khalil Khalilian, *Legal Claims of Iran and the United States before the Hague Tribunal* (Sherkat-e Sahami-ye Enteshar, Tehran 2003)



might compel a state to take specific measures, the Tribunal has still adhered to the principles of compensation under international law as the benchmark. For example, in the *Phelps Dodge* case,<sup>1</sup> the Tribunal stated that these special circumstances could not release the respondent from its obligation to pay compensation to the claimant.

### 3. The Threshold of Control: An Indicator for Attributing the Conduct of Non-State Entities to the State

The initial version of the attribution rule now reflected in Article 8 of the ARSIWA was presented by the Special Rapporteur, Roberto Ago, in the 1970s. This Article stipulates that the conduct of a person or group of persons who are “in fact... acting on behalf of the State” shall be considered an act of the State under international law.<sup>2</sup> The aim was to encompass “groups which, while not belonging to the regular armed forces of the State, were nonetheless carrying out military activities in time of war”.<sup>3</sup> Ago gave the examples of “private individuals who exceptionally performed duties of regular armed auxiliary forces, such as the Parisian taxi drivers in the First World War at the Battle of the Marne” and also “volunteers whom certain Powers sent, or allowed to go, to countries where a civil war was in progress”.<sup>4</sup> Furthermore, the ILC in this context referred to “kidnappings carried out on foreign soil by private individuals acting in fact on behalf of the State”<sup>5</sup> and noted that “if it were established that the persons concerned had acted in concert and at the instigation of the organs of a State, the act of kidnapping should be regarded as an act of that State”.<sup>6</sup>

The Commission conceived this rule for situations where the state established a relationship of a representative nature with a non-state actor, during which the state instructed the non-state actor to perform a specific act on its behalf.<sup>7</sup> Consequently, the commentary to the initial Draft ARSIWA specified: “It must be proved in fact that the person or group of persons was in fact appointed by organs of the State to perform a specific task or to carry out a particular duty, that they performed that definite task at the instigation of those organs”.<sup>8</sup>

However, other statements by the ILC in the 1970s indicate a potentially broader conception of this rule. These statements refer to states being responsible for the conduct of groups that were formed with state encouragement and received financial support, training, and weapons, and with which the state coordinated its own forces’ operations. The ILC claimed that these groups:

*“from the standpoint of international law, could no longer be considered individuals. They became formations which acted in coordination with and at the instigation of the State and carried out missions authorized or even entrusted to them by*

1 *Phelps Dodge Corporation v Iran* (n 12) 126.

2 Roberto Ago, ‘Third Report on State Responsibility’ (1971) UN Doc A/CN.4/246 and Add. 1-3, 283.

3 ILC, ‘Summary Records of the Meetings of the Twenty-Sixth Session’ (1974) UN Doc A/CN.4/SER.A/1974, para. 5.

4 ILC (n 17) paras. 5, 7.

5 ILC (n 17) para. 7.

6 ILC vol II (n 17) 284.

7 James Crawford, ‘First Report on State Responsibility’ (1998) UN Doc A/CN.4/490 and Add.1-7, para 158. See also Mačák (n 29) 414-15.

8 ILC vol II (n 17) 284-5 (commentary to draft art. 8 para. 8).



*that State. They then fell into the category of persons or groups which were in fact, if not formally, associated with the State apparatus... .”<sup>1</sup>*

Special Rapporteur James Crawford addressed the inherent ambiguity in the standard attribution language when the ILC revisited the formulation of this rule in 1998. Crawford noted that “as a matter of ordinary language, one can speak of a person acting ‘on behalf of’ another person without any actual instructions or authorization from that other person”.<sup>2</sup> Considering the ICJ’s judgment in the *Nicaragua* case, where the Court considered attribution based on the state’s exercise of “effective control” over the contra forces,<sup>3</sup> Crawford examined to what extent the language of Article 8 should encompass situations of *de facto* state control over a person or group, in addition to cases of “express agency” involving “actual instructions or authorization” from the state.<sup>4</sup> Crawford proposed a revised formulation whereby the conduct of persons or groups who were “in fact acting on the instructions of, or under the direction or control of...” the State would be considered an act of the State under international law.<sup>5</sup>

While this change could be seen merely as clarifying the ambiguous concept of an entity acting “on behalf of” a State,<sup>6</sup> it also somewhat expands the scope of the rule and allows for greater flexibility in determining whether the conduct in question was carried out on the part of a State.<sup>7</sup> The final development in the evolution of Article 8 was a minor change to Crawford’s proposed wording, introduced by the Drafting Committee of the ILC. This committee modified Crawford’s reference to “direction and control,” replacing the conjunction “and” with the disjunctive “or.”<sup>8</sup> Thus, the Drafting Committee emphasized that the requirements for direction *or* control are alternatives, not cumulative.<sup>9</sup> This drafting history may explain the inconsistency in interpreting Article 8, which on one hand refers to direction and control jointly as a single attribution standard, but on the other hand indicates that proving either criterion is sufficient.

In the claims brought before the IUSCT, the criterion of state “control” over non-state entities plays a pivotal role in attributing responsibility to the state. This criterion, however, has not always been defined explicitly and uniformly, and its application in various cases indicates a dynamic and variable approach.

In the case of *Clem M. Food Corp. v. Iran and the Simorg Company*, the Tribunal, relying on evidence such as the use of government letterhead on documents and the appointment of government officials to the board of directors, found that the government exercised control over the “Cycl” company. This ruling shows that “the appointment of government officials,” “control of the board of directors,” and “the percentage of state ownership” are effective criteria for determining state control.<sup>10</sup>

1 ILC vol II (n 17) 80 (commentary to draft art. 11 para. 32).

2 Crawford (n 21) para. 197.

3 *Nicaragua v United States of America* (n 6) 115.

4 Crawford (n 21) para. 197.

5 Crawford (n 21) 43, 56.

6 ILC, ‘Summary Records of the Meetings of the Fiftieth Session’ (1998) UN Doc A/CN.4/SER.A/1998, para 8.

7 Kubo Mačák, ‘Decoding Article 8 of the International Law Commission’s Articles on State Responsibility: Attribution of Cyber Operations by Non-State Actors’ (2016) 21 *Journal of Conflict and Security Law* 405, 414.

8 ILC, ‘Report of the International Law Commission on the Work of its Fifty-Second Session’ (2000) UN Doc A/55/10, 65.

9 ILC (n 28) 289, para 79.

10 See *Phelps Dodge Corporation v Iran* (n 10); *Starrett Housing Corp v Government of Islamic Republic of Iran* (n 10); *Foremost Tehran*



In contrast to this approach, in the case of *Flexi-Van Leasing Inc. v. Iran*, the Tribunal, while acknowledging state control over the “Starline” and “Iran Express” companies, deemed state control alone insufficient for attributing responsibility. The Tribunal emphasized that specific and direct interference by the state in the claimant’s contractual rights must be proven for state responsibility to be established.<sup>1</sup> In this case, the Tribunal could not prove a direct link between state control and the companies’ failure to perform their contractual obligations; consequently, it did not hold the state responsible. This ruling demonstrates that the threshold for proving effective control for attribution of responsibility at the Tribunal is higher than the threshold for establishing jurisdiction.

In the *Pak Dairy* case, the Tribunal considered both majority share ownership and control of the board of directors sufficient to determine that the company was “under state control” and affirmed its jurisdiction. However, in the merits phase, the Tribunal only accepted the “prevention of dividend payments” as direct state interference, which alone was insufficient to prove expropriation.<sup>2</sup>

The *PepsiCo v. Iran* case also emphasizes the criteria of majority share ownership and control of the board of directors for determining state control over the Zamzam companies.<sup>3</sup> However, in this case too, despite confirming state control, the Tribunal only accepted the prevention of dividend payments as state interference and deemed this interference insufficient to prove all of the claimant’s allegations. In a recent case related to the *Bonyad-e Mostazafan* (Foundation of the Oppressed), the Tribunal refrained from making a decision on the responsibility of the state and the Bonyad due to the payment of obligations from an security account. This indicates the Tribunal’s flexibility in applying the state control criterion and its potential to deviate from previous practices in specific cases.<sup>4</sup>

Finally, the *Kodak* case emphasizes the flexibility of the “control” concept in different legal contexts and its dependence on the specific context and available evidence.<sup>5</sup> In this case and similar ones like *Eghra*, the Tribunal showed that even without direct instructions, the actions of entities that are structurally involved in performing governmental functions can be attributable to the state. In general, the IUSCT uses the indications and documents available in the cases to determine the threshold of control for attributing the conduct of non-state entities to the state and adopts a flexible and dynamic approach that consistently emphasizes the direct and specific effect of state actions on the claimant’s rights.

An analysis of the Tribunal's practice shows that this legal entity has, in specific instances, distinguished between the phase of establishing jurisdiction and the merits. The Tribunal has applied a lower threshold for the control criterion at the jurisdiction phase and more stringent criteria at the merits phase. Furthermore, from the Tribunal's perspective, the exercise of governmental authority by entities such as the Bonyad-e Mostazafan has been the basis for

---

*Inc v Islamic Republic of Iran* (n 45).

1 *Flexi Van Leasing Inc v Iran* (1986) 12 Iran-US CTR 335.

2 Ahmad Mozaffari and Mehdi Nikfar, *Selected Awards of the Iran-United States Claims Tribunal (Volume 2)* (Qoqnoos, Tehran 2020) 181 [In Persian].

3 *PepsiCo Inc v Islamic Republic of Iran* (1986) 13 Iran-US CTR 3.

4 *PepsiCo Inc v Islamic Republic of Iran* (n 36) 6.

5 *Eastman Kodak Co v Iran* (1987) 17 Iran-US CTR 153, 166.



attributing these acts to the Government of Iran, and not merely the Bonyad being under state control.<sup>1</sup> This approach demonstrates the Tribunal's flexibility in assessing the concept of control and the attribution of conduct, offering varying interpretations of the relationships between private entities and the state depending on the circumstances of each case. This approach is particularly important in claims related to the functioning of state-controlled entities like the Bonyad-e Mostazafan for determining state responsibility.

#### 4. The Standard of Control in State Ownership of Non-State Actors

One of the key axes in analyzing cases where the Tribunal has addressed the role of control as the basis for attributing the conduct of non-state entities to the state has been the issue of ownership and control. To clarify this standard, the case of *Flexi-Van Leasing Inc. v. The Government of the Islamic Republic of Iran*<sup>2</sup> is presented. In this case, the claimant was a company engaged in leasing transportation equipment, such as cargo containers, chassis, and trailers, worldwide. Prior to 1979, the company had leased some of its equipment to companies operating in Iran, including Starline and Iran Express. Flexi-Van claimed that the Government of Iran had gained control of these two Iranian companies before February 29, 1980, and, consequently, using its control, had violated the contractual rights of the claimant company under the lease agreements (including receiving future rental payments and the return of equipment) and had expropriated them. According to the claims, Iran Express had stopped paying rent since March 1979, and Starline since mid-1978. The claimant argued that in February 1980, three managers appointed by the Iranian government, along with Revolutionary Guards, had occupied the headquarters of Iran Express and dismissed its managers and officials. Later, the Government of Iran also appointed individuals as new managers of this company through the Ministry of Roads and Transportation. Regarding Starline, the claimant provided documents indicating that the Bonyad-e Mostazafan had expropriated and taken complete control of this company at least from early 1980.<sup>3</sup>

The defenses of the Iranian government consisted of two parts. First, the government denied exercising any control over these two companies, and second, even if expropriation were proven, the changes made had only affected the position of the shareholders and not the legal personality of the companies themselves, which remained obligated to their debts and commitments. Therefore, in the government's view, the Government of Iran was not responsible for fulfilling the contractual obligations of these companies.<sup>4</sup> However, in its award, the Tribunal declared that "Starline was under the control of the Bonyad-e Mostazafan, and thus, under the control of the Government of Iran." Nevertheless, the Tribunal pointed out the important fact that the documents in the case did not show the form and details of this control or whether this control had led to interference in the management or day-to-day decision-making of Starline.<sup>5</sup> The Tribunal explicitly stated that "mere proof of the

1 *Hyatt International Corp v Government of Islamic Republic of Iran* (1985) 9 Iran-US CTR 72, 87.

2 *Flexi Van Leasing Inc v Iran* (n 33).

3 *Flexi Van Leasing Inc v Iran* (n 33) para. 349.

4 *Flexi Van Leasing Inc v Iran* (n 33).

5 Mozaffari and Nikfar (n 34) 128.



Government's control over Starline is not sufficient for the claim of expropriation of the claimant's contractual rights." Expropriation of contractual rights can only be argued if there has been specific and attributable interference in the claimant's contractual rights themselves. The Tribunal further argued: For the claimant to prove its claim of expropriation, it must show that Starline or Iran Express, when failing to pay rent or return the equipment, did so based on instructions, recommendations, or orders from the Bonyad or the Government of Iran.<sup>1</sup>

What becomes clear from the *Flexi-Van Leasing* case is that although the Tribunal confirmed the government's control over Starline through the Bonyad-e Mostazafan, it emphasized that Starline had already been defaulting on rent payments and returning containers before its takeover by the Bonyad and continued this performance afterward. Therefore, based on the available evidence, it cannot be proven that this refusal was carried out under government orders, and consequently, the Government of Iran cannot be held responsible in this matter. Regarding Iran Express, despite the Tribunal's acknowledgment that this company had come under government control from early 1980, the Tribunal, citing similar reasons, did not consider the type and extent of control exercised by the government sufficient to conclude that government interference in the contracts between Iran Express and the claimant was significant enough to be considered expropriation.

A noteworthy point is that the Iranian Arbitrator, in his Concurring Opinion in the *Flexi-Van* case, explicitly stated: "No government is *ipso facto* responsible for the acts and obligations of private companies or even public institutions by virtue of the fact that such companies can be considered under the 'control' of the government, unless those acts or obligations are specifically and legally attributable to the government itself."<sup>2</sup> Accordingly, from the review of the Tribunal's view in the *Flexi-Van* case, it appears that the threshold of control considered by the Tribunal for establishing its jurisdiction (according to Paragraph 3 of Article VII of the Claims Settlement Declaration) is not entirely identical to the threshold of control considered by the Tribunal for the attributability of wrongful conduct of private persons and entities to the state. In the latter case, the Tribunal has deemed a higher threshold of control necessary, which aligns more closely with the effective control theory.

The Tribunal's practice in the case of *Foremost Tehran, Inc. v. The Government of the Islamic Republic of Iran*<sup>3</sup> is also based on this same approach. In this case, the Foremost group of companies, which had a share in establishing Pak Dairy in Iran, claimed that since late 1978, Iranian governmental entities that were shareholders in Pak Dairy had taken actions that effectively deprived Foremost of exploiting and using its 31% share in the company. In response, the Respondents claimed that Pak Dairy was not under government control and that the units related to the case which were shareholders (including the Organization for Investment and Economic and Technical Assistance of Iran, the National Iranian Investment Company, the Bank of Industry and Mines, and the Bonyad-e Mostazafan) had merely exercised their rights as shareholders and had not implemented government policy. The Respondents also emphasized the difference

<sup>1</sup> Mozaffari and Nikfar (n 34) 129.

<sup>2</sup> Mozaffari and Nikfar (n 34) 131.

<sup>3</sup> *Foremost Tehran Inc v Islamic Republic of Iran* (1986) 10 Iran-US CTR 228.



between expropriation and majority share ownership by government entities, stating that this does not change the private nature of the company.<sup>1</sup> Adopting this approach, when examining whether Pak Dairy was a “entity controlled by the Government of Iran” under Paragraph 3 of Article VII of the Claims Settlement Declaration for establishing jurisdiction, the Tribunal simultaneously considered two criteria: the identity of the shareholders and the composition and conduct of the board of directors. In the Tribunal’s opinion, majority share ownership and control of the board of directors together proved that Pak Dairy was an entity “controlled by the Government of Iran,” and thus the Tribunal affirmed its jurisdiction over this case.

## 5. The Standard of Control in the Management of Non-State Actors

The Tribunal’s practice indicates that the mere existence of state control (through share ownership or the presence of government representatives on the board of directors) is insufficient for attributing responsibility. The Tribunal emphasizes the necessity of a direct causal link between the company management’s actions (which are influenced by or result from government orders) and the violation of the claimant’s rights. In other words, it must be proven that the company management acted on behalf of the state and in execution of its policies.

In the *Foremost* case, the Tribunal emphasized that Foremost, as a minority shareholder, should not have expected to be able to successfully oppose the policies of the majority (governmental) shareholders, who were advancing their actions in coordination with the policies of the revolutionary government. In the Tribunal’s view, the only action by the majority that was explicitly against Foremost’s interests and for which the state was held responsible was the prevention of dividend payments. However, this specific interference was not in itself considered expropriation. The American Arbitrator also noted that the Government of Iran was held responsible for the actions of a private company because the managers who represented state entities and state banks, and who held the majority of shares, dominated the company.<sup>2</sup> However, the Tribunal only found the requisite degree of control concerning the prevention of cash dividend payments to the claimants, and only this action was attributed to the Government of Iran. This case shows that for holding the state responsible, the Tribunal seeks to prove direct and effective government interference through the company’s management in violating the claimant’s rights.

In the *PepsiCo* case, PepsiCo sought payment for Pepsi-Cola syrup delivered to the various Zamzam companies. The claimant alleged that the Bonyad-e Mostazafan was an entity controlled by the Government of Iran and, by executing government orders, had taken over the shares of the Zamzam companies and placed them under government control. In response, the Respondents denied this, stating that the Bonyad-e Mostazafan was a private charitable organization with an independent legal personality and that the Zamzam companies were not, within the meaning of Paragraph 3 of Article VII of the Claims Settlement Declaration, under the control of the Bonyad-e Mostazafan. In this case, the Tribunal deemed the Bonyad-e

<sup>1</sup> *Foremost Tehran Inc v Islamic Republic of Iran* (n 45) para.188. See also Seyed Ghasem Zamani and Parastu Vosoghi, ‘The Role of the Iran-United State’ (2024) 2 Iranian Journal of International and Comparative Law 42.

<sup>2</sup> Mozaffari and Nikfar (n 34) 198.



Mostazafan an entity controlled by the Government of Iran and, relying on the two criteria of majority share ownership and control of the board of directors, stated that the Bonyad had also placed the Zamzam companies under government control.<sup>1</sup> However, in its merits review, the Tribunal merely noted that the Government of Iran and the Bonyad-e Mostazafan denied any responsibility for the claimant's claim and disregarded the Bonyad's response, which claimed it had acted merely as a shareholder in the Zamzam company.<sup>2</sup> It seems the Tribunal in this case did not provide sufficient reasoning for the attributability of the Zamzam companies' actions to the Government of Iran and the Bonyad. Nevertheless, the Tribunal ordered payment from the security account, effectively holding the Government of Iran responsible for the conduct of the Zamzam companies. This approach by the Tribunal differs from the *Flexi-Van* and *Foremost* cases and applied a lower threshold for attribution.

In the *Economy Forms* case, the claimant alleged that the Sabir and Mana companies, which were under the control of the Government of Iran, had refused to perform their contractual obligations and attributed the responsibility for this breach to the Government of Iran. Accepting this claim, the Tribunal declared that the Respondents themselves had admitted that 100% of Mana company's shares belonged to the Industrial Development and Renovation Organization (IDRO), and that this organization was wholly owned by the Government of Iran and some state entities. Furthermore, part of Sabir company's shares were owned by the Ministry of Energy.<sup>3</sup> In contrast, the Iranian Arbitrator, in a Dissenting Opinion, criticized the Tribunal's award. He argued that the mere establishment of public institutions by the government or state supervision over their performance is not, by itself, sufficient reason to equate the legal status of these institutions with the state, either in domestic or international law. In his view, the connection or link of a public institution to the state can only be accepted within the framework of international law if that institution in fact acts as one of the state's organs or an executive arm. He emphasized that the mere existence of a control relationship between the state and an institution is insufficient for attributing its responsibility to the state, and it must be proven that the state exercised intense and pervasive control over the institution. However, in the Iranian Arbitrator's opinion, the Tribunal in this case had not established such severe control yet still considered the mentioned companies to be under the control of the Government of Iran.<sup>4</sup>

In the *Schering Corporation* case, the claimant alleged that the Workers' Council, formed after the revolution in the offices and factory of Iran-Schering, had taken financial control of the company and prevented it from paying its debts to the claimant for the purchase of pharmaceutical products. In this case, the Tribunal faced the issue of whether the Government of Iran was responsible for the actions of workers' councils. Referring to Article 104 of the Constitution of the Islamic Republic of Iran, the Tribunal noted that this article provides for the formation of workers' councils. However, the Tribunal emphasized that the mere provision for the formation of these councils in the constitution does not imply that the councils acted

1 *PepsiCo Inc v Islamic Republic of Iran* (n 36).

2 *PepsiCo Inc v Islamic Republic of Iran* (n 36) 6.

3 *Economy Forms Corp v Islamic Republic of Iran* (1982) 3 Iran-US CTR 42.

4 Mozaffari and Nikfar (n 34) 211.



as part of the state structure. Ultimately, the Tribunal concluded that in the present case, there was no reason to indicate that the Workers' Council had acted on behalf of the Government of Iran or state organs. According to the Tribunal, the Council members were not selected by the government, no instructions or recommendations were communicated to the Council by the government, and the Council did not carry out its actions on the orders of any state institution.<sup>1</sup>

In the *Otis Elevator* case, the claimant alleged that the conduct of a group of Iranian workers who had formed a trade union to protect the rights and interests of their members was attributable to the Government of Iran. He claimed that the Ministries of Labour and Commerce had actively supported the trade union's actions. However, the Tribunal clarified that to prove this claim, the claimant must specifically prove two things: first, that the mentioned ministries had interfered in the trade union's affairs, and second, that these ministries had encouraged or participated in the union's actions. Ultimately, due to the claimant's inability to provide sufficient evidence to prove these points, the Tribunal rejected his claim.<sup>2</sup>

The Tribunal's practice shows that for attributing responsibility to the state, there must be a direct and effective link between the state's policies and actions (through the management of companies) and the violation of the claimant's rights. Mere share ownership or the membership of government representatives on the board of directors is insufficient for attribution. The Tribunal usually seeks to prove that the company management, acting on the orders or encouragement of the state, took actions that led to the violation of the claimant's rights. The *PepsiCo* case is an example where the Tribunal deviated from this practice and attributed responsibility to the state using a lower threshold.

## Conclusion

The attribution of conduct to the state is a cornerstone issue in international law, determining how the conduct of non-state actors is attributed to states for the breach of their obligations. While the general principle is to attribute the conduct of state organs to the state itself, in exceptional cases, the conduct of non-state actors may also be attributable to the state, provided that the state exercises control, direction, or instruction over those actors. This standard of control, particularly in light of the practice of international judicial bodies such as the International Court of Justice (ICJ) and the International Criminal Tribunal for the former Yugoslavia (ICTY), has been subject to differing interpretations; the ICJ, with its "effective control" approach, and the ICTY, with its "overall control" approach, have delineated different scopes for attributing the conduct of non-state actors to states. The importance of the criterion of direction and control for the Iran-United States Claims Tribunal (IUSCT/ Tribunal) is also rooted in this Tribunal's jurisdiction to hear claims between states and their nationals. Establishing state control over private entities justifies the Tribunal's jurisdiction to hear these claims and is also effective in determining compensation from the security account and in examining cases of expropriation and taking. Ultimately, although company ownership

<sup>1</sup> *Schering Corporation v Islamic Republic of Iran* (1984) 5 Iran-US CTR 361.

<sup>2</sup> *Otis Elevator Co v Islamic Republic of Iran* (1987) 14 Iran-US CTR 283.



also plays a role in determining state control, the Tribunal's practice shows that for attributing the conduct of non-state actors, an effective causal link between state control and the harmful act must be proven.

In cases where entities or institutions are considered non-governmental under domestic law but perform governmental or quasi-governmental duties and functions, the Tribunal examines the entity's statute, delegated authority, and the degree of government involvement in that entity to determine whether its actions can be attributed to the state. Even if an entity possesses public assets, this alone is insufficient to attribute its actions to the state; rather, it must be seen whether the state exercises control over the activities of that entity. In conditions of chaos, such as during a revolution, proving a link between the individuals or groups that committed acts and the state is difficult. However, the state cannot evade responsibility by invoking these conditions. If the state allows groups such as the Islamic Revolutionary Committees to act as local security forces and delegates governmental authority to them, the state will be responsible for the actions of these groups. On the other hand, mere state ownership of a company or entity is insufficient to attribute its actions to the state. It must be proven that the state exercised effective control over the company's activities and that the company's wrongful acts stemmed from state instructions or policies. Even if a company is under the control of the Bonyad-e Mostazafan (which is under state control), the state cannot be held responsible for that company's actions based solely on this argument. It must be proven that the state directly interfered in the violation of the claimant's rights. Furthermore, the mere existence of state control (through share ownership or the membership of government representatives on the board of directors) is insufficient for attributing responsibility. There must be a direct causal link between the actions of the company's management (which are influenced by or result from state orders) and the violation of the claimant's rights. In other words, it must be proven that the company management acted on behalf of the state and in line with its policies. In summary, the IUSCT, for attributing the acts of non-state entities to the state, seeks to prove the state's effective control over that entity and a causal link between this control and the violation of the claimant's rights. Mere ownership or the membership of government representatives on the board of directors is insufficient for attributing responsibility.



## References

### Books

- Brownlie I, *System of the Law of Nations: State Responsibility (Part 1)* (Clarendon Press 1986)
- International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, Text and Commentary* (tr A Ebrahim Gol, Shahr-e Danesh 2023) [In Persian].
- Khalilian K, *Legal Claims of Iran and the United States before the Hague Tribunal* (Sherkat-e Sahami-ye Entesharat 2003) [In Persian].
- Mozaffari A and Nikfar M, *Selected Awards of the Iran-United States Claims Tribunal (Volume 2)* (Qoqnoos 2020) [In Persian].

### Chapters in Edited Books

- Zamani SG, 'The Place of the Principles and Rules of International Responsibility of States in the Oil Platforms Case' in *The Judgment of the International Court of Justice in the Oil Platforms Case* (Markaz-e Pazhuhesh-ha-ye Majles-e Shou-ra-ye Eslami 2015) [In Persian].

### Journal Articles

- Griebel J and Plücker M, 'New Developments Regarding the Rules of Attribution? The International Court of Justice's Decision in *Bosnia v. Serbia*' (2008) 21 *Leiden Journal of International Law* 601
- Mačák K, 'Decoding Article 8 of the International Law Commission's Articles on State Responsibility: Attribution of Cyber Operations by Non-State Actors' (2016) 21 *Journal of Conflict and Security Law* 405
- Milanovic M, 'State Responsibility for Acts of Non-State Actors: A Comment on Griebel and Plücker' (2009) 22 *Leiden Journal of International Law* 307
- Seyed Ghasem Zamani and Parastu Vosughi, 'The Role of the Iran-United State' (2024) 2 *Iranian Journal of International and Comparative Law* 42.

### International Cases

- Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) [2007] ICJ Rep 43
- Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14
- Prosecutor v Tadić* (Judgment) ICTY-94-1-A (15 July 1999)
- Young, James and Webster v United Kingdom* App no 7601/76; 7806/77 (ECtHR, 13 August 1981)

### Iran-United States Claims Tribunal Cases

- Economy Forms Corp v Islamic Republic of Iran* (1982) 3 Iran-US CTR 42
- Eastman Kodak Co v Iran* (1987) 17 Iran-US CTR 153
- Flexi Van Leasing Inc v Iran* (1986) 12 Iran-US CTR 335
- Foremost Tehran Inc v Islamic Republic of Iran* (1986) 10 Iran-US CTR 228
- Hyatt International Corp v Government of Islamic Republic of Iran* (1985) 9 Iran-US CTR 72
- Otis Elevator Co v Islamic Republic of Iran* (1987) 14 Iran-US CTR 283.
- PepsiCo Inc v Islamic Republic of Iran* (1986) 13 Iran-US CTR 3
- Phelps Dodge Corporation v Iran* (1986) 10 Iran-US CTR 121
- Schering Corporation v Islamic Republic of Iran* (1984) 5 Iran-US CTR 361
- Starrett Housing Corp v Government of Islamic Republic of Iran* (1983) 4 Iran-US CTR 122

### International Law Commission (ILC) & UN Documents

- Ago R, 'Third Report on State Responsibility' (1971) UN Doc A/CN.4/246 and Add.1-3
- Crawford J, 'First Report on State Responsibility' (1998) UN Doc A/CN.4/490 and Add.1-7
- ILC, 'Report of the International Law Commission on the Work of its Fifty-Second Session' (2000) UN Doc A/55/10
- ILC, 'Summary Records of the Meetings of the Fiftieth Session' (1998) UN Doc A/CN.4/SER.A/1998
- ILC, 'Summary Records of the Meetings of the Twenty-Sixth Session' (1974) UN Doc A/CN.4/SER.A/1974