

Voting Record of Judge Ameli in the Cases Before the Iran-United States Claims Tribunal

Appointed by the Islamic Republic of Iran under the Algiers Accords,¹ Judge Ameli has proudly served the Iran-United States Claims Tribunal and decided the cases with independence and impartiality as required by the Tribunal Rules. As he stated in his letter of resignation to the Tribunal, "It has been a great honor for me to serve such an august Tribunal in the highly significant judicial resolution of international disputes between the Islamic Republic of Iran and the United States of America".²

The present survey intends to reject the widespread assertion that all Iranian judges of the Tribunal in the cases before them always voted in favor of the Iranian parties, against any recovery by the US parties and passionately supported the position of the Iranian parties.³ The survey puts the record

¹ Declarations of the Government of the Democratic and Popular Republic of Algeria, including the General Declaration, the Claims Settlement Declaration and the Undertakings of the Governments of the United States of America and the Islamic Republic of Iran concerning the Declarations (19 Jan. 1981), 1 Iran-US CTR 3; <http://www.iusct.net/Default.aspx>

² Letter of Resignation of Judge Ameli, for 19 June 2008, which was adopted by the Tribunal and became effective on 17 June 2009, when he decided the cases he had heard prior to resignation under the Tribunal Rules, Article 13(5). For the Tribunal Rules, *see* 1 Iran-US CTR 57; <http://www.iusct.net/Default.aspx>

³ *See, e.g.*, the assertion that "The Tribunal's Iranian judges passionately advance Iran's positions in virtually every Tribunal case." Nancy Combs, *Profile: Judge George H. Aldrich*, 7 Int'l L. F. 47, 48 (2005). In fact, Prof. Combs, a former legal adviser of the Tribunal, at a later visit to The Hague and a subsequent email graciously apologized to Judge Ameli: "As I'm sure I said at the time, I have always respected your work tremendously and felt personally grateful that you were the Iranian arbitrator in the Chamber in which I worked. I have followed the Tribunal's work since I left -- not terrifically closely, but enough to see that you most certainly did take a stand for your principles. I can't say I'm surprised at the high price you paid for your integrity. Judge Aldrich always impressed upon the American legal assistants the difficult position in which the Iranian judges found themselves and that it would do an Iranian judge no favor to be publicly complimented by an American. All that said, I remain sorry that I didn't choose my words more carefully in that essay, either to say what I really meant or to not say anything at all." Email of 17 July 2010 by Prof. Combs on file with the author.

Also note the assertion that "The important point about Benjamin Isaiah's case/ 219/ is [that] it is perhaps the first and perhaps the last case that there was a concurring opinion in favor of an American recovery in this tribunal. Judge Shafeiei concurred with Chairman Bellet and Judge Aldrich in the conclusion of that award." Hamid Sabi, co-counsel for US claimants in *Sabet/Gulf Associates v. Iran*, cases 815, 816, 817 and 385, Hearing Transcript, 7 Oct 1997, Day 1, p. 87, where Judge Ameli interjected that "I do not find that proper to say. As I understand [it], you have not searched your record well." And Mr. Sabi responded, "I stand to be corrected." *Id.*

straight by presenting the voting record of Judge Ameli in the cases before the Tribunal.

The record of his votes in the cases before the Tribunal, not including Orders and Awards on Agreed Terms, shows that Judge Ameli has judged in favor of the position of United States parties and against that of Iranian parties in 37% of his Awards and Decisions, i.e., 26 out of 70, although his vote in some has been concurring in part,⁴ as set forth in Part A, below. Of the 44 or 63% remaining awards and decisions he judged in favor of the position of the Iranian parties, he voted half of them, that is, 22, in unanimity or with the majority, in 9 he voted concurring and dissenting in part and only in 13 or 18.57% of his total awards and decision he judged in full dissent.

The methodology applied in the survey counts as one the Awards and Decisions that join or consolidate several cases as well as different operative paragraphs of the Award or Decision.⁵ Under the Tribunal Rules, Articles 31, 32 and 34-37, the tribunal may issue interim, interlocutory, partial, final awards, awards on agreed terms and other decisions and procedural orders as well as decisions on interpretation and correction of the award or on additional award.

The survey does not cover the procedural Orders in the cases before the Tribunal due to their huge number and their unavailability on the Tribunal website, although they should be public⁶ and are available on Westlaw. However, Judge

Further, although Judge Ameli did not sit in any cases with him, Judge Mangard, one of the first third-country judges of the Tribunal and chairman of Chamber Three, was of the opinion that in the Tribunal deliberations of the cases, Iranian and American members, “even if they don’t admit it, really act as the leading counsel for the party in question ... They both do that, no doubt about it.” STEPHEN J. TOOPE, *MIXED INTERNATIONAL ARBITRATION: STUDIES IN ARBITRATION BETWEEN STATES AND PRIVATE PERSONS*, 351, Cambridge, Grotius Pub. (1990).

⁴ See, Stephen Schwebel, *National Judges and Judges Ad Hoc of the International Court of Justice*, 48 Int’l & Comp. L. Q. 889 (1999), where in a similar survey, at pp. 893 and 899-900, covering his votes in the cases before the ICJ, including judgments, advisory opinions as well as procedural orders and counting in their different operative paragraphs or subparagraphs, Judge Schwebel concludes that he has voted in 11 instances against the position of his country, the United States.

⁵ *But cf.*, n. 3, *supra*, where Judge Schwebel’s voting record counted in different operative paragraphs and subparagraphs of same judgment, advisory opinion or procedural order.

⁶ In recent years the Tribunal has discontinued to release the Orders for publication contrary to its earlier practice, which treated them as “other decisions” available to the public under the Tribunal Rules, Article 32(5). Tribunal Rules, Article 32(5) provides that “All awards and other decisions shall be made available to the public, except that upon the request of one or more arbitrating parties, the arbitral tribunal may determine that it will not make the entire award or other decision public, but will make public only portions thereof from which the identity of the parties, other identifying facts and trade or military secrets have been deleted.”

To date the Tribunal has never decided to delete a portion of its award and other decisions under this provision other than exclusion of very few settlement agreements attached to the awards on agreed terms under the Tribunal Rules, Article 34(1). K.H.

Ameli has agreed to all procedural Orders against the position of the Iranian parties but few, where a good number of the Orders concerning submission of further pleadings, hearings, post-hearing briefs, document production, amendment of claims, admission of late evidence or witness and appointment of experts were crucial to the fate of the cases. These cases include not only the ones listed in various parts of the present paper but also the cases which remained pending after his separation from the Tribunal in July 2009.

Awards on Agreed Terms, based on the settlement of the parties, are not contentious and for that reason are not included in the survey. Under the Tribunal Rules, Article 34(1), if requested by both parties and accepted by it, the Tribunal records the settlement agreement of the parties in the form an award on agreed terms in and for that reason it usually does not have much to disagree with and in case it does it is not against one party but both of them and so it is not suitable for this survey. Nevertheless, dissenting votes may arise concerning prima facie jurisdiction of the Tribunal, compliance by one or both parties with their conditions precedent to rendering of the award on agreed terms and payment of the settlement amount from the security account of the Tribunal or for other reasons. Thus, he dissented in one out of 7 awards on agreed terms as some US judges dissented or concurred in other awards. The awards on agreed terms in which Judge Ameli has participated are separately set forth in Part C.

Similarly, Termination Orders are not generally contentious and for that reason are not included in the survey. Under the Tribunal Rules, Article 34(2), the Tribunal may terminate the arbitral proceedings in a case where its continuation has become unnecessary or impossible for any reason other than settlement. With prior notice and lack of justifiable objection, the Tribunal usually agrees with a party to withdraw its claim. Termination Orders are not generally published, although they are public and should be available on Westlaw. However, for the sake of completeness and their limited number, they are listed in Part D.

The survey also does not include Judge Ameli's votes on decisions of the important Committee on Administrative and Financial Questions⁷ and the Full

Ameli, *Confidentiality of Arbitral Proceedings Before the Iran-United States Claims Tribunal*, February 2010, paper presented to the International Law Association Committee on International Commercial Arbitration. <http://ameliarbitration.com/wp-content/uploads/2012/01/Confidentiality-of-Arbitral-Proceedings-before-the-Iran-United-States-Claims-Tribunal.pdf>

⁷ The CAFQ decisions include approval of the draft annual budget of the Tribunal, presented by the Secretary-General for contribution by the State Parties, and resolution of any questions that may arise in connection therewith or implementation thereof in the course of the financial year, subject to the confirmation of Full Tribunal. In deciding to approve the budget, the CAFQ considers the efficient and independent operation of the Tribunal at reasonable costs for the fees and costs of the judges and the Secretary-General, salary and benefits of the staff, together of 100 personnel in earlier years, and maintenance costs of the premises. The CAFQ also deals with questions arising from application of the Staff Rules, issues concerning privileges and immunities of the Tribunal and its personnel with the host government under the headquarters agreement

Tribunal's Administrative Meetings, where in major and sensitive disagreements between the two governments or with the Secretary-General, he has judged in favor of the position of the United States or the Tribunal rather than Iran's in much larger instances, in some cases by majority or even outvoting the chairman. The CAFQ and Full Tribunal decisions are not published or otherwise available to the public, except in very few cases.

The significance of the administrative decisions of the Tribunal and the CAFQ may be seen in a published 2007 decision of the Full Tribunal, where Judge Ameli was a member of its drafting committee.⁸ The decision involved replacement of one resigning Iranian judge with another in a major Full Tribunal case that the resigning judge had heard but would not agree with the financial terms for continuation of service in the deliberations and rendering of the award in the case that the CAFQ and the Full Tribunal had offered. It was not so much against the position of one or the other government but of a senior Iranian judge and in favor of the integrity of the Tribunal and its processes.

Part A.

1. *Arsenberg, et al. dba Skidmore, Owings & Merrill v. Iran*, Award No. 213-61-1 (27 Feb 1986), 10 Iran-US CTR 37, concurring and dissenting in part,
2. *Foremost Tehran Inc. et al. v. Iran et al*, Award 220-37/231-1 (10 Apr 1986), 10 Iran-US CTR 228, concurring and dissenting in part,
3. *Karim-Panahi v. United States*, Award 532-182-2 (26 Jun 1992), 28 Iran-US CTR 225, concurring and dissenting in part,
4. *Kaysons International Corp. v. Iran*, Award 548-367-2 (28 Jun 1993), 29 Iran-US CTR 222, dissenting as to personal jurisdiction, concurring as to the rest,
5. *E. Protiva, et al. v. Iran*, Award No. 566-316-2 (14 Jul 1995), 31 Iran-US CTR 89, concurring and dissenting in part,
6. *Westinghouse Electric Corp. v. Iran Air Force*, Award 579-389-2 (26 Mar 1997), 33 Iran-US CTR 60, concurring and dissenting in part,
7. *Hakim v. Iran*, Award 587-953-2 (2 Jul 1998), 34 Iran-US CTR 67, concurring and dissenting in part,

and issues regarding the lease agreement of the Tribunal premises with the host government. The Secretary-General also operates generally in consultation with the CAFQ.

⁸ *Iran v. United States*, Decision A3/A8/A9/A14/B61-FT (7 May 2007) Communication to the Parties, 38 Iran-US CTR 177, unanimous.

8. ***A. Sabet et al. v. Iran***, Award 593-815/816/817-2 (30 Jun 1999), 35 Iran-US CTR 3, dissenting on jurisdiction, and concurring on liability,
9. ***Gulf Associates, Inc. v. Iran, et al.***, Award 594-385-2 (7 Oct 1999), Iran-US CTR, concurring and dissenting in part,
10. ***A. Sabet et al. v. Iran***, Award 598-815/816/817-2 (28 Nov 2000), 36 Iran-US CTR 203, concurring in most part, dissenting in limited part,
11. ***PepsiCo, Inc. v. Iran, et al.***, DEC 55-18-1 (18 Dec 1986), 13 Iran-US CTR 328, concurring on dismissal of Iran request,
12. ***Marine Midland Bank N.A. v. Iran et al.***, DEC 109-163-2 (23 Apr 1993), 29 Iran-US CTR 185, concurring on dismissal of counterclaim,
13. ***Irving Trust Company v. Iran, et al.***, DEC 110-204-2 (23 Apr 1993), 29 Iran-US CTR 189, concurring on dismissal of counterclaim,
14. ***Manufacturers Hanover Trust Co. v. Iran et al.***, DEC 111-223-2 (23 Apr 1993), 29 Iran-US CTR 193, concurring on dismissal of counterclaim,
15. ***Mellon Bank NA v. Iran, et al.***, DEC 112-247-2 (23 Apr 1993), 29 Iran-US CTR 197, concurring on dismissal of counterclaim,
16. ***First National Bank of Chicago, et al. v. Iran et al.***, DEC 113-249-2 (23 Apr 1993), 29 Iran-US CTR 201, concurring on dismissal of counterclaim,
17. ***First Interstate Bank of California v. Iran, et al.***, DEC 114-287-2 (23 Apr 1993), 29 Iran-US CTR 205, concurring on dismissal of counterclaim,
18. ***American Express International Banking Company v. Iran, et al.***, DEC 115-363-2 (23 Apr 1993), 29 Iran-US CTR 209, concurring on dismissal of counterclaim,
19. ***Iran v. United States***, DEC 116-A15(IV)/A24-2 (18 May 1993), 29 Iran-US CTR 214, concurring on dismissal of Iran's request for stay of US court proceedings,
20. ***Birnbaum v. Iran***, DEC 124-967-2 (14 Dec 1995), 31 Iran-US CTR 286, concurring on dismissal of Iran's request,
21. ***United States v. Iran***, DEC 126-B36-2 (17 Mar 1997), 33 Iran-US CTR 56, joining on dismissal of Iran's request,
22. ***Westinghouse Electric Corp. v. Iran Air Force***, DEC 127-389-2 (23 Apr 1997), 33 Iran-US CTR 204, joining on dismissal of Iran's request,

23. ***United States v. Iran***, DEC 128-B36-2 (23 May 1997), 33 Iran-US CTR 346, concurring on dismissal of Iran's request,
24. ***Iran v. United States***, DEC 129-A4/A7/A15(IF and III)-FT (23 Jun 1997), 33 Iran-US CTR 362, concurring on dismissal of Iran's request,
25. ***United States v. Iran***, DEC 130-A28-FT (19 Dec 2000), 36 Iran-US CTR 5, concurring and dissenting in part,
26. ***United States v. Iran***, DEC 132-A33-FT (9 Sep 2004), 38 Iran-US CTR 5, concurring and dissenting in part,

Part B.

27. ***INA Corp. v. Iran***, Award 184-161-1 (12 Aug 1985), 8 Iran-US CTR 373, dissenting,
28. ***International Schools Services Inc. v. National Iranian Copper Industries Co.***, Award 194-111-1 (10 Oct 1985), 9 Iran-US CTR 187, concurring and dissenting in part,
29. ***Touche Ross & Company v. Iran***, Award 197-480-1 (11 Oct 1985), 9 Iran-US CTR 284, dissenting,
30. ***Housing and Urban Services International Inc. v. Iran, et al***, Award No. 201-174-1 (22 Nov 1985), 9 Iran-US CTR 313, dissenting,
31. ***Flexi-van Leasing Inc. v. Iran***, Award 259-36-1 (11 Oct 1986), 12 Iran-US CTR 335, majority,
32. ***PepsiCo, Inc. v. Iran, et al.***, Award 260-18-1 (11 Oct 1986), 13 Iran-US CTR 3, dissenting,
33. ***Scott, Forseman and Company v. Iran***, Award 313-10172-1 (16 Jul 1987), 16 Iran-US CTR 103, unanimous,
34. ***Starrett Housing Corp. v. Iran et al.***, Award 314-24-1 (14 Aug 1987), 16 Iran-US CTR 112, dissenting in fact,
35. ***Arthur Young & Company v. Iran et al.***, Award 338-484-1 (30 Nov 1987), 17 Iran-US CTR 245, unanimous,
36. ***Khajetoorians et al. v. Iran***, Award 504-350-2 (25 Jan 1991), 26 Iran-US CTR 37, unanimous,
37. ***Samrad, et al. v. Iran***, Award 505-461/462/463/464/456-2 (4 Feb 1991), 26 Iran-US CTR 44, unanimous in three and majority in two of the cases,

38. ***Gabay v. Iran***, Award 515-771-2 (10 Jul 1991), 27 Iran-US CTR 40, unanimous,
39. ***Saboonchian v. Iran***, Award 524-313-2 (15 Nov 1991), 27 Iran-US CTR 248, unanimous,
40. ***Collins Systems International Inc. v. The Navy of Iran***, Award 526-431-2 (20 Jan 1992), 28 Iran-US CTR 21, dissenting,
41. ***Iran v. United States***, Award No. 529-A15(II:A and II:B)-FT (6 May 1992), 28 Iran-US CTR 112, concurring and dissenting in part,
42. ***Seaco, Inc. v. Iran***, Award 531-260-2 (25 Jun 1992), 28 Iran-US CTR 159, unanimous,
43. ***Saghi, et al. v. Iran***, Award 544-298-2 (22 Jan 1993), 29 Iran-US CTR 20, dissenting,
44. ***Birnbaum v. Iran***, Award 549-967-2 (6 Jul 1993), 29 Iran-US CTR 260, dissenting,
45. ***Moin v. Iran***, Award 557-950-2 (25 May 1994), 30 Iran-US CTR 70, unanimous,
46. ***Khosrowshahi et al. v. Iran***, Award 558-178-2 (30 Jun 1994), 30 Iran-US CTR 76, concurring and dissenting in part,
47. ***Sobhani v. Iran***, Award 563-827-2 (4 May 1995), 31 Iran-US CTR 26, unanimous,
48. ***Bavanati v. Iran***, Award 564-296-2 (17 May 1995), 31 Iran-US CTR 36, unanimous,
49. ***Ghaffari v. Iran***, Award 565-968-2 (7 Jul 1995), 31 Iran-US CTR 60, dissenting,
50. ***Karubian v. Iran***, Award 569-419-2 (6 Mar 1996), 32 Iran-US CTR 3, unanimous,
51. ***Islamic Republic of Iran Railway v. United States***, Award 572-B58-2 (9 Oct 1996), 32 Iran-US CTR 92, dissenting,
52. ***United States v. Iran***, Award 574-B36-2 (3 Dec 1996), 32 Iran-US CTR 162, concurring and dissenting in part,
53. ***Monemi v. Iran***, Award 582-274-2 (20 Jun 1997), 33 Iran-US CTR 349, unanimous,

54. ***Iran v. United States***, Award 586-A27-FT (5 Jun 1998), 34 Iran-US CTR 39, unanimous,
55. ***Iran v. United States***, Award 590-A15(IV)/A24-FT (28 Dec 1998), 34 Iran-US CTR 105, concurring and dissenting in part,
56. ***Iran v. United States***, Award 597-A11-FT (7 Apr 2000), 36 Iran-US CTR 84, concurring and dissenting in part,
57. ***Iran v. United States***, Award 601-A3/A8/A9/A14/B61-FT (17 Jul 2009), 38 Iran-US CTR 197, concurring and dissenting in part,
58. ***Flexi-Van Leasing, Inc. v. Iran***, DEC 54-36-1 (18 Dec 1986), 13 Iran-US CTR 324, unanimous,
59. ***Iran v. United States***, DEC 65-A19-FT (30 Sep 1987), 16 Iran-US CTR 285, dissenting,
60. ***Gabay v. Iran***, DEC 99-771-2 (24 Sep 1991), 27 Iran-US CTR 194, unanimous,
61. ***Ministry of National Defence of Iran v. United States and Bell Helicopter Textron Co***, DEC 100-A3/A8-FT (22 Nov 1991), 27 Iran-US CTR 256, majority,
62. ***Saboonchian v. Iran***, DEC 103-313-2 (13 Feb 1992), 28 Iran-US CTR 51, unanimous,
63. ***Collins Systems International Inc. v. Iran Navy***, DEC 104-431-2 (13 Feb 1992), 28 Iran-US CTR 195, dissenting,
64. ***Cherifat et al. v. Iran***, DEC 106-277-2 (25 Jun 1992), 28 Iran-US CTR 216, unanimous,
65. ***Karim-Panahi v. United States***, DEC 108-182-2 (27 Oct 1992), 28 Iran-US CTR 225, unanimous,
66. ***Birnbaum v. Iran***, DEC 117-967-2 (20 Oct 1993), 29 Iran-US CTR 293, unanimous,
67. ***Ghaffari v. Iran***, DEC 123-968-2 (30 Oct 1995), 31 Iran-US CTR 124, unanimous,
68. ***Iran v. United States***, DEC 125-A15/A24-FT (11 Oct 1996), 32 Iran-US CTR 115, dissenting,
69. ***Hyatt International Corp., et al. v. Iran, et al***, ITL 54-134-1 (17 Sep 1985), 9 Iran-US CTR 72, concurring and dissenting in part,

70. *Iran v. United States*, ITL 83-B1-FT (Counterclaim) (9 Sep 2004), 38 Iran-US CTR 77, concurring and dissenting in part.

Part C. Awards on Agreed Terms

81. ***Lerner v. Iran***, Award 592-242-2 (11 Jun 1999), 35 Iran-US CTR 135, unanimous,

82. ***Iran v. United States***, Award 568-A13/A15 (I and IV:C)/ A26 (I, II and III)-FT (22 Feb 1996), 32 Iran-US CTR 207, unanimous,

83. ***Iran v. United States***, Award 525-B1 (Claim 4)-FT (2 Dec 1991), 27 Iran-US CTR 282, unanimous,

84. ***Combustion Engineering, Inc., Vetco Inc. v. National Iranian Steel Company***, Award 521-308-2 (24 Sep 1991), 27 Iran-US CTR 288, unanimous,

85. ***CTI-Container Leasing Corp. v. Starline Iran Co, Iranian Chamber of Commerce, Government of IR Iran***, Award 502-451-2 (9 Jan 1991), 26 Iran-US CTR 275, unanimous,

86. ***Granger Associates, v. Iran et al.***, Award 320-184-1 (20 Oct 1987), 16 Iran-US CTR 37, dissenting,⁹

87. ***Hyatt International Corp., et al. v. Iran, et al.***, Award 214-134-1 (3 Mar 1986), 10 Iran-US CTR 365, unanimous,

Part D. Termination Orders

88. ***Fazeli v. Iran***, Case 270, Ch. 2, Order of 20 Jan 1993, unanimous,

89. ***Mostofizadeh v. Iran***, Cases 278, Ch. 2, Order of 20 Sep 1993, unanimous,

90. ***Mercantile Trust Co. v. Iran***, Case 351, Ch. 2, Order of 23 Apr 1993, unanimous,

91. ***MCA Inc. v. Iran***, Case 768, Ch. 2, Order of 24 Oct 1990, unanimous.

⁹ See, *United States (Shipside Packing) v. Iran*, Award 102-11875-1 (12 Jan 1984), 5 Iran-US CTR 80, and *VSI Corp v. Iran Aircraft Industries Corp.*, Award 56-14-1 (15 Jun 1983), 3 Iran-US CTR 73, where in both awards on agreed terms Judge Holtzmann dissented; *ITT Industries, Inc. v. Iran*, Award No. 47-156-2 (26 May 1983), 2 Iran-US CTR 348, where Judge Aldrich filed his draft award as Concurring Opinion.

Part E. Other Cases

Judge Ameli participated in several other cases and procedural orders therein, which remained pending before the Tribunal when his resignation became effective in 2009.