

BIICL

***Mass Claims Processes: Innovations on
the Front of Evidence***

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Overview

- I. **Concept of international MCPs**
- II. **MCPs: a brief history**
- III. **Evidence and standards of proof**
- IV. **Due process**
- V. **Conclusion**

I. Concept of international MCPs – Definitions

- **Mass claims:** compensation sought when a large number of parties have suffered **damages arising from the same diplomatic, historic or other event**
- **Mass claims processes (MCPs): tribunals, commissions and other mechanisms** created to resolve disputes in such circumstances
 - many but not all involve one or more State parties
 - ▶ No mechanism alike
 - ▶ Aimed at addressing thousands of claims as quickly and effectively as fairness, justice, or political or diplomatic factors may require

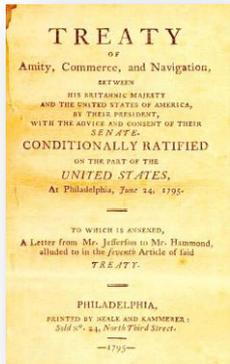
I. Concept of international MCPs – Features

- **Constitution** by way of:
 - ▶ Treaty or other bilateral or multilateral agreement (e.g. Iran-US CT)
 - ▶ Action of the UN (e.g. UNCC)
 - ▶ Implementing legislation
 - ▶ Orders in judicial proceedings

- **Procedure:**
 - ▶ Arbitration procedure
 - ▶ Administrative procedure
 - ▶ Mix of both

II. MCPs – A brief history (1/2)

The Jay Treaty



1800

Mixed commissions

1945

Lump sum agreements

1980s

Modern MCPs

II. MCPs – A brief history (2/2)

1981	Iran – US Claims Tribunal (Iran–US CT)	Claims relating to the 1979 Islamic Revolution and Hostage crisis	4,000
1991	UN Compensation Commission (UNCC)	Claims relating to the 1990-91 Gulf War and Irak invasion of Kuwait	2.6 million
1996	Commission for Real Property of Claims of Displaced Persons and Refugees (CRPC)	Claims relating to the 1992 – 1995 war in Bosnia and Herzegovina	240,000
1997	Claims Resolution Tribunal for Dormant Accounts in Switzerland (CRT-I)	First claims tribunal for assets deposited with Swiss banks	10,000
1999	Housing and Property Claims Commission (HPCC)	Claims relating to the 1999 conflict in Kosovo	29,000
2000	Claims Resolution Tribunal (CRT-II)	Second claims tribunal for assets deposited with Swiss banks	21,000
2000	Eritrea-Ethiopia Claims Commission (EECC)	Claims relating to the 1998-2000 war between Eritrea and Ethiopia	

III. Evidence & standards of proof – Dilemmas

- Pressure of processing a very large number of claims
 - Desire to speed payment of compensation
 - Difficulties that victims often face in finding documentary evidence
- Relentless trade-off between **mass claims processing** and **individual assessment**

III. Evidence & standards of proof – Innovations (1/2)

- Concept of “relaxed standards of proof”
 - ▶ What is **plausible**
 - ▶ Rather than preponderance of the evidence

Iran-US CT	“[e]ach party shall have the burden of proving the facts relied on to support his claim or defense”	Article 24(1) Iran-US CT Tribunal rules
UNCC	“[e]ach claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular group or claims is eligible for compensation pursuant to the [relevant UN] Security Council resolution”	Article 35(1) UNCC Provisional rules
	“documents and other evidence required will be the reasonable minimum that is appropriate under the particular circumstance of the case . A lesser degree of documentary evidence ordinarily will be sufficient for smaller claims such as those below USD20,000.”	Article 35(2)(c) UNCC Provisional rules
CRT-I	“The claimant must show that it is plausible in light of all the circumstances that he or she is entitled, in whole or in part, to a dormant account.”	Article 22(1) CRT-I Rules of procedure

III. Evidence & standards of proof – Innovations (2/2)

- **Flexible verification process**

- Grouping of claims, statistical modeling and sampling, computerized matching, application of standardized verification and valuation process

- **Presumption of facts**

- **Flexible procedure**

- Almost no intervention of the parties (e.g. hearing or cross-examination)

IV. Due process

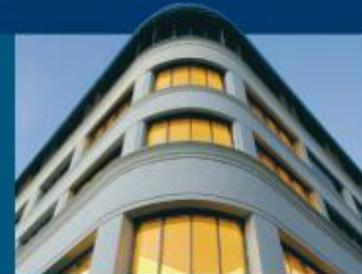
- MCPs have their **own standards** of due process
 - **Due process** is observed **for the system as a whole** and not as much for each individual party
- But similarly to domestic courts, MCPs aim at providing justice to the victims by safeguarding their access to impartial adjudicators and the proper, expedient and fair conduct of proceedings, and by allowing final decisions to be rendered and implemented

V. Conclusion

- Strong structural similarity between MCPs and domestic class actions but MCPs tend to constitute self-contained *ad hoc* regime
- MCPs put value in facilitating decision of international disputes by way of a “rough” justice
- Food for thought
 - ▶ Relaxed standards of proof
 - ▶ Relaxed procedure

Thank you

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