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

1945

1980s

Mixed commissions

Lump sum agreements

Modern MCPs

The Treaty of Amity, Commerce, and Navigation, between the United States of America and His Britannic Majesty, was signed at Paris on the 16th day of September, in the year of our Lord one thousand eight hundred and eighty-three.

In witness whereof, the said John Adams, on the part of the United States of America, and Sir John Jervis, K., Viscount St. Vincent, on the part of His Britannic Majesty, have signed the present Treaty, and thereunto affixed their several signatures.

Done in duplicate, one copy of which shall be transmitted to the Senate of each of the United States of America, and the other to the British Government, by the proper ministers or consuls of each of the said United Nations, for the ratification thereof.

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## II. MCPs – A brief history (2/2)

<table>
<thead>
<tr>
<th>Year</th>
<th>Commission Name (Abbreviation)</th>
<th>Claim Details</th>
<th>Claims Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981</td>
<td>Iran – US Claims Tribunal (Iran–US CT)</td>
<td>Claims relating to the 1979 Islamic Revolution and Hostage crisis</td>
<td>4,000</td>
</tr>
<tr>
<td>1991</td>
<td>UN Compensation Commission (UNCC)</td>
<td>Claims relating to the 1990-91 Gulf War and Irak invasion of Kuwait</td>
<td>2.6 million</td>
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<tr>
<td>1997</td>
<td>Claims Resolution Tribunal for Dormant Accounts in Switzerland (CRT-I)</td>
<td>First claims tribunal for assets deposited with Swiss banks</td>
<td>10,000</td>
</tr>
<tr>
<td>1999</td>
<td>Housing and Property Claims Commission (HPCC)</td>
<td>Claims relating to the 1999 conflict in Kosovo</td>
<td>29,000</td>
</tr>
<tr>
<td>2000</td>
<td>Claims Resolution Tribunal (CRT-II)</td>
<td>Second claims tribunal for assets deposited with Swiss banks</td>
<td>21,000</td>
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</tbody>
</table>
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

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Article</th>
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<tbody>
<tr>
<td>Iran-US CT</td>
<td>“[e]ach party shall have the burden of proving the facts relied on to support his claim or defense”</td>
<td>Article 24(1) Iran-US CT Tribunal rules</td>
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<tr>
<td>UNCC</td>
<td>“[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”</td>
<td>Article 35(1) UNCC Provisional rules</td>
</tr>
<tr>
<td></td>
<td>“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.”</td>
<td>Article 35(2)(c) UNCC Provisional rules</td>
</tr>
<tr>
<td>CRT-I</td>
<td>“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.”</td>
<td>Article 22(1) CRT-I Rules of procedure</td>
</tr>
</tbody>
</table>
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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