based values? Would the Tribunal observe its mandate in article V of the Claims Settlement Declaration to decide all cases “on the basis of respect for law,” or would its process rather given support to the notion that “arbitral” and “arbitrary” mean the same thing? Those questions were unanswerable in 1981, but they may be answerable at least in part today.

In 1982 and 1983 members of the Society heard the then U.S. agent and other speakers address the growing body of procedural practice and very tiny number of substantive decisions and awards. For many then and now, the overriding question has been whether justice delayed is justice denied.

The corpus of substantive decisions of the Tribunal is exponentially greater today than in 1983. Our speakers today have been closely involved with the work of the Tribunal, as legal advisers to parties, scholarly commentators, or both. They will address recent decisions and their long-range significance.

**REMARKS BY JOHN R. CROOK**

As the U.S. Agent at the Tribunal, I am aware that I may have to deal later with some of you in Claims Court. Hence, I shall exercise a certain amount of discretion here by ignoring the chairman’s suggested topic and addressing a wholly different one.

I was flattered by the chairman’s invitation to comment upon recent Tribunal awards, taking as a point of departure the positions argued by the U.S. Government in the matters under arbitration. Implicit in that invitation was the subtle suggestion that, at least in this context, the position of the U.S. Government can be taken as a possible measure of a sound jurisprudence. I shall decline, however, to affirm that suggestion. For, under the circumstances, to praise the Tribunal excessively, even if deservedly, might well be taken as testimonial to the claim that the Tribunal is vulnerable to U.S. pressure.

On the other hand, to criticize excessively a particular chamber or arbitrator at this juncture might complicate what is already a fairly intricate web of relationships. I shall take the easy way out and comment briefly instead upon a number of significant current events in the Tribunal. I shall then comment on factors important both in shaping the jurisprudence of the Tribunal itself and in coloring its future developments.

The Tribunal has been in existence for more than three years. Thanks to the extraordinary efforts of Arthur Rovine, former U.S. Agent at the Tribunal and others, the Tribunal has been brought into operation. At this point, it has rendered 118 awards and its total payout from the security account is rapidly approaching $200 million. The greatest majority of awards and payments involve either contracts with terms that have been agreed upon or negotiated settlements.

Enormous tasks remain. Two chambers face a substantial backlog of cases that have been heard but not yet decided. The substantial majority of claimants, including many large claimants, and all the small claimants, numbering more than 2700, have yet to have their claims heard. As a result, since Mr. Rovine passed the mantle on to me, my major preoccupation has been concentration on the issues of pace and timing. In particular, I have been concentrating on procedures by which the Tribunal confronts and ultimately decides its cases in an orderly and expeditious way.

*Agent of the United States at the Iran-U.S. Claims Tribunal. Mr. Crook spoke in his personal capacity.*
Let me at this point draw your attention to a couple of current events at the Tribunal. One of them occurred this week. Last Tuesday, President Lagergren announced his intention to resign. He has neither filed a letter of resignation nor indicated an effective date. I suspect he will be filing the letter shortly after Easter.

The President did express to me his intention to provide an ample and reasonable period of time for the parties to agree on a successor or, if agreement becomes impossible, for the appointing authority to act. The President also indicated his intention to abide by the principles of the "Mosk rule." This rule, adopted by the Tribunal, provides that arbitrators shall continue serving in cases they had heard on the merits before they submitted their resignations.

In terms of the management and administration of the Tribunal, a most critical issue is the search for a suitable successor to President Lagergren. Anyone in the audience with views or suggestions on this very critical matter should contact me immediately.

In general, the recent pace of events in the chambers has been rather slow. There have been some significant events in the full Tribunal. It has decided Case A/16 in which it held, six votes to three, that it does not have jurisdiction over certain letter of credit claims by Iranian banks. Also, by a vote of five to four, with Mr. Lagergren dissenting, the Tribunal decided Case No. 111 last week. It held that the Tribunal has jurisdiction over claims by nonprofit entities.

Both decisions are noteworthy. For example, in Case No. 111, there is a reasoned and rather carefully explained textual analysis. There are also interesting references to principles and precedents of international law used to reinforce the Tribunal’s construction.

The third full Tribunal award, which concerned Case A/18, was also signed last week. As you know, Case A/18 is the much noted dual nationality decision. The Tribunal held, six votes to three, that the international law rule of dominant and effective nationality should determine the Tribunal’s jurisdiction with respect to claims of dual nationality. Mr. Jones will address A/18 on the merits. I shall resist the temptation to debate him here. I do want to draw your attention to one element of A/18 which dramatizes the most important factor in shaping the pace and texture of future Tribunal decisions.

For a long time A/18 has been a case of considerable political visibility. The Iranians have made it amply clear that this case was a matter of high importance to them, and that they would take certain drastic, though generally unspecified, measures if the Tribunal made an unacceptable award. The award has come out. It provoked the loudest and most pointed reaction to date by the Iranian arbitrators.

This brings me to my third point. The fundamental factor in shaping the Tribunal’s future jurisprudence is that this arbitration involves the United States and Iran. Consequently, the process will continue to have a certain degree of contentiousness and a political dimension that cannot be avoided.

The most dramatic illustration of this point is the recent statement the Iranian arbitrators appended to their signature in Case A/18. They charged that the Tribunal’s decision was yet another clear manifestation of its bad faith in interpreting the law. The neutrality and composition of the Tribunal was attacked, and the Tribunal itself was condemned as being so biased as to have lost all credibility in adjudicating any dispute between Iran and the United States. The statement noted that the Tribunal was composed, at the time, of two Swedish arbitrators, one of whom had persisted in keeping his post despite the fact that Iran had disqualified him two years earlier before
commencement of the proceedings, and an Agent of the Dutch Ministry of Foreign Affairs. The Dutch are, of course, a U.S. North Atlantic Treaty Organization ally.

Although such charges are quite serious, if we consider the process, history, and people involved, they are hardly surprising. They are tantamount to political pressure. However, it is wrong to assume that this kind of political pressure will result in decisions based upon inappropriate political grounds. Case A/18 stands as a demonstration that the Tribunal is quite capable of rendering reasoned, principled decisions on tough questions in the face of intense pressure. Yet, such pressures will obviously be a factor in shaping the climate in which the Tribunal operates.

Inevitably, it will become more attractive for arbitrators to examine analyses of facts and law which do not require them to make politically fraught decisions. Nevertheless, Case A/18 stands for the proposition that what has to be done, will be done. Consequently, the process is going to be personally difficult for many involved, demanding a little more time and causing a little more personal anxiety than would be ideal.

The second factor in shaping the Tribunal’s jurisprudence is rather obvious. There are not just one but four different Tribunals, each speaking with its own voice. For example, the recent full Tribunal awards reflect a voice, mode of analysis, or way of proceeding to confront a problem distinctive and distinct from each of the three chambers. I do not mean to praise or condemn the Tribunal. I only submit to you that the full Tribunal has found, at least in these recent cases, its distinctive voice.

Similarly, each of the chambers has a distinctive voice reflecting the personalities and philosophies of the persons involved. In Chamber II, for example, there has been a tendency to identify and discuss certain legal issues that other chambers have ignored. This tendency may reflect Professor Riphagen’s participation. The choice of law analysis in award 99, Case No. 245, known as CMI International, illustrates this point. It does not provide a terribly profound analysis of choice of law principles involved in interpreting article 5 of the Claims Settlement Declaration, but it does recognize the issue and seeks to deal with it as an important question. I welcome that trend. Other chambers have other voices. Chamber I seems inclined to present detailed legal analyses in its majority opinions. It tends to state conclusions in a sketchy form. Lately, Chamber III awards have been more fact bound.

This brings me to my third point. The third factor that must be kept in mind in assessing the Tribunal’s future jurisprudence is that many of these cases are going to be fact bound. What makes them difficult is often not great questions of law but very complicated fact questions. It is remarkable how many cases ultimately boil down to questions of proof and fact. From the point of view of the Tribunal, these questions are as difficult to decide as questions of law. Thus, the work of Tribunal watchers will become a little harder since factfinding renders records more complicated, and printed opinions less informative.

These are then the three factors involving the Tribunal’s decisional process: the inevitable political dimension, the distinctive voices of the three chambers and the tremendous importance of facts in determining the ultimate result in a particular case. They have strongly shaped the jurisprudence of the Tribunal to date and are going to continue shaping it in the future.