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JOINT VENTURES AND THE LAW OF INTERNATIONAL CLAIMS

Richard B. Lillich*

Joint ventures are one of the most remarkable post-World War II international business developments. Although the late Professor Friedmann noted in 1971 that they were becoming "the most important form of foreign investment in the developing countries of Africa, Asia and Latin America,"¹ "only within the last two decades has the joint capital venture received more than scant attention."² Now, whether one is interested in establishing a "minority joint venture," in which the foreign investor holds less than fifty percent of the equity in the joint enterprise and the host country the majority interest, or a "multipartite joint venture," in which a group of international firms establishes a joint enterprise in the host country, often with the participation of private local interests or the government of that country, the available literature to which one may turn for guidance is immense.³ Yet, understandably in view of the rapid growth in the number and complexity of international joint ventures, many problems relevant to their use remain unaddressed. One of them — the question of when a joint venture or a participant therein, injured by the wrongful act of a foreign state, satisfies the nationality requirement for purposes of bringing an international claim — is the subject of this article.⁴

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1. W. FRIEDMANN & J. BÉGUIN, *JOINT INTERNATIONAL BUSINESS VENTURES IN DEVELOPING COUNTRIES* 3 (1971).

2. Buffenstein, *Foreign Investment Arbitration and Joint Ventures*, 5 N.C. J. INT'L L. & COM. REG. 191, 194 (1980).

3. See, e.g., *JOINT VENTURING ABROAD* (D. Goldsweig ed. 1985); *THE MULTINATIONAL JOINT VENTURE* (H. Ravine & S. Nelson eds. 1981); Birrell, *International Joint Ventures*, 1975 *PRIVATE INVESTORS ABROAD* 241 (1976).

4. Like other commentators, the present writer and Professor Christenson did not mention joint venture claims in their treatment of eligible claimants. See R. LILLICH & G. CHRISTENSON, *INTERNATIONAL CLAIMS: THEIR PREPARATION AND PRESENTATION* chs. I & II (1962). Such claims are mentioned but not discussed by the author of the most recent treatment of eligible claimants, who apparently considered them controlled by the customary international law precedents governing partnership claims. See Ohly, *A Functional Analysis of Claimant Eligibility*, in *INTERNATIONAL LAW OF STATE RESPONSIBILITY FOR INJURIES TO ALIENS* 281, 290-91 (R. Lillich ed. 1983). No other references to joint venture claims, at least in the English language literature, have been found. Cf. Buffenstein, *supra* note 2.

I. INTRODUCTION

Since, as the Permanent Court of International Justice stated in the *Panevezys-Saldutiskis Railway* case, "it is the bond of nationality between the State and the individual which alone confers upon the State the right of diplomatic protection,"⁵ it was only a matter of time before questions about the nationality requirement's impact upon joint venture claims arose. While some unreported state practice doubtless exists, the first public airing of the questions raised by the claims of joint ventures or participants therein occurred before the Iran-United States Claims Tribunal, established pursuant to the 1981 Algiers Accords.

Article VII(1) of the Claims Settlement Agreement⁶ makes the claims of "legal entities" (including partnerships and joint ventures) organized under claimant state law eligible only if natural persons who are claimant state citizens hold a 50 percent interest in such entities. Applying this provision, the Tribunal held early on that a U.S. partnership had standing to claim when 50 percent or more of the ownership interests therein were held by U.S. citizens.⁷ Although it has not had to address the question, presumably the Tribunal would reach the same result by analogy were the claim of a U.S. joint venture involved.

If a claimant state partnership or joint venture cannot satisfy the 50 percent test, however, or if the entity is one formed under the law of the respondent or a third state, no explicit guidance can be obtained from the language of Article VII(1) as to whether a claimant state partner/participant in the ineligible partnership/joint venture can bring a claim based upon his ownership interest therein. Whether he has such standing depends upon the Tribunal's interpretation of the general language found in the Claims Settlement Agreement.

The primary guide to interpreting the Claims Settlement Agreement, including questions of the Tribunal's jurisdiction and the standing of claimants, is "the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."⁸ The Claims Settlement Agreement being a treaty, its interpretation

5. *Panevezys-Saldutiskis Railway* (Estonia v. Lithuania), 1939 P.C.I.J. (ser. A/B) No. 76, at 16 (Feb. 28).

6. See *Agreement on the Release of the American Hostages*, 81 DEPT STATE BULL. (Feb. 1981), at 1, 4, reprinted in 20 I.L.M. 223, 232 (1981). On the background, organization and jurisprudence of the Tribunal from its inception through late 1983, see THE IRAN-UNITED STATES CLAIMS TRIBUNAL 1981-1983 (R. Lillich ed. 1984).

7. See *Queens Office Tower Assocs. v. Iran Nat'l Airlines Corp.*, 2 IRAN-U.S. C.T.R. 247, 248 (1983-I) (100 percent U.S.-owned); *Dames & Moore v. Iran*, 4 IRAN-U.S. C.T.R. 212, 216-17 (1983-III) (90 percent U.S.-owned).

8. Article 31(1) of the Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 340, reprinted in 8 I.L.M. 679, 691-92 (1969) (entered into force Jan. 27, 1980). For Tribunal applica-

also is governed by customary international law. Indeed, Article 31(3)(c) of the Vienna Convention on the Law of Treaties specifically provides that "any relevant rules of international law applicable in the relations between the parties" should be applied in interpreting treaties.⁹ Hence, in determining whether a claimant has standing to bring a claim based upon his interest in a claimant state partnership or joint venture, the Tribunal must look to the customary international law that has governed the claims of partnerships and partners thereof in the past.¹⁰

The United States relied upon this body of law in its Memorial in what effectively became the test case for joint venture claims before the Tribunal, *Housing & Urban Services Int'l, Inc. v. TRC (HAUS)*,¹¹ arguing that a U.S. partner/participant in an eligible partnership/joint venture had standing to bring a claim under Article VII(1) of the Claims Settlement Agreement to the extent of his *pro rata* interest in the partnership/joint venture.¹² Attached to its Memorial as Appendix A was a legal opinion by the present writer entitled "Partnerships and Members Thereof as Eligible Claimants Under Customary International Law."¹³ This opinion, after examining the opinions of publicists, evidence of state practice and the relevant decisions of international tribunals governing such claims, concluded, *inter alia*, that "[c]ustomary international law permits partners in an ineligible claimant state, as well as respondent or third state, partnerships to bring claims based upon their *pro rata* interest in the partnership."¹⁴ The next three sections of this article are an updated and slightly revised version of this opinion, followed by a final section summarizing the Tribunal's jurisprudence after *HAUS* and offering some tentative conclusions about the current status of partnership and joint venture claims.

II. OPINIONS OF PUBLICISTS

The leading authority on the Law of International Claims, the late

tions of this test, see Case No. A-1, 1 IRAN-U.S. C.T.R. 189, 190 (1981-82); Case No. A-18, 5 IRAN-U.S. C.T.R. 251, 259 (1984-I).

9. 1155 U.N.T.S. at 340, 8 I.L.M. at 692. See Case No. A-18, 5 IRAN-U.S. C.T.R. at 260.

10. See also Article V of the Claims Settlement Agreement, which enjoins the Tribunal to decide all cases on the basis of, *inter alia*, international law.

11. 9 IRAN-U.S. C.T.R. 313 (1985-II).

12. Memorial of the United States on the Issue of Jurisdiction Over Claims of U.S. Nationals Participating with Non-Nationals in Partnerships or Associations at 17-23, *reprinted in* Iranian Assets Litigation Rep. at 8,440-41 (May 11, 1984).

13. Iranian Assets Litigation Rep. at 8,442 (May 11, 1984).

14. *Id.* at 8,447.

Professor Borchard, does not specifically address the question of the claims of partnerships *qua* partnerships. Rather, noting that under municipal law partnerships rarely are regarded as legal entities possessing juridical status, he assumes *sub silentio* that a partnership claim can be brought under international law when all the partners in the firm possess claimant state nationality. Taking a similar functional approach where a claimant state firm has one or more non-national partners, he points out that

[i]nternational tribunals have on many occasions permitted one of several partners to recover for his individual interest in partnership property, where it clearly appeared that the other partner or partners labored under a disability depriving him or them of standing before the commission, and this, notwithstanding the general [municipal law] rule that claims in favor of a partnership must be prosecuted by all the partners. Thus, the citizen partners in a firm consisting partly of nationals and partly of aliens have been allowed by arbitral courts to recover their *pro rata* share of partnership claims.¹⁵

This approach to partnership claims, while superficially similar to that of "piercing the corporate veil" to permit stockholder claims, is analytically distinct "[o]wing to the conception of the severability of the interests of partners in partnership property. . . ." ¹⁶ Moreover, even when the partnership is based in the respondent state or a third state giving it some sort of juridical status not known at common law, Borchard reports that international tribunals have not considered themselves bound by such municipal law concepts, but have applied a functional approach and rendered awards to claimant state partners based upon their proportionate interests in the firm. "Civil law countries in which such firms have established themselves," he writes, "have usually denied the severability of the interests of the partners composing the firm, yet international commissions have in most cases admitted the separate claims of the individual partners for their undivided *pro rata* shares of the partnership property."¹⁷

Other publicists, assessing the jurisprudence of international tribunals, have reached conclusions identical to Borchard's. Thus, Ralston states that

[q]uestions of partnership have repeatedly arisen, and often claims have been allowed to be presented by a partner for his undivided interest in the subject-matter of his claim when his associates in the partnership were so situated, because of citizenship or otherwise, as not to have a standing before the commission.¹⁸

15. E. BORCHARD, *THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD* 614 (1915).

16. *Id.* at 613.

17. *Id.* at 615-16.

18. J. RALSTON, *THE LAW AND PROCEDURE OF INTERNATIONAL TRIBUNALS* 139 (1926).

Feller, focusing exclusively upon the decisions of the various Mexican Claims Commissions, points out that, while the claimant state nationality of all the partners was sufficient to make a partnership an eligible claimant when it apparently had been formed and was located in the claimant state, similar claimant state nationality of all the partners was not enough to support a partnership claim when the situs of the partnership was in Mexico.¹⁹ In the latter situation, however, he notes that the commissions allowed claims filed in the name of the individual partners.²⁰ Nielsen, the commissioner under a 1934 lump sum agreement between the United States and Turkey,²¹ endorsed this approach by remarking that a "claim might have been presented in the name of a partnership of American members organized in the United States and doing business in Turkey."²² "Had a valid claim been presented in behalf of an American partnership having an alien member," he added, "compensation might have been made to the American members to the extent of their interests."²³

Over a decade ago, after reviewing post-World War II lump sum settlement practice, the present writer and Professor Weston reached the same conclusion as the above publicists, namely, that

[t]raditionally, international law has permitted [partnership] claims when all the members of a *partnership in a claimant state* were nationals of that state. If one of the partners was the national of another state, however, then the partnership itself was not an eligible claimant, although the remaining partners were protected individually to the extent of their interests in the firm.²⁴

To this conclusion should be added the clarifying observation, so obvious that it frequently goes unstated by the publicists, that claimant state partners in a *respondent or third state partnership* also routinely have had claims allowed to the extent of their *pro rata* interests in such a partnership.²⁵

It is readily apparent from even a cursory survey of contemporary international claims practice that, as has been stated elsewhere,

19. A. FELLER, THE MEXICAN CLAIMS COMMISSIONS 1923-1934, at 16 (1935).

20. *Id.*

21. United States-Turkey Agreement, Oct. 25, 1934, 49 Stat. 3670, E.A.S. No. 73.

22. F. NIELSEN, AMERICAN-TURKISH CLAIMS SETTLEMENT: OPINIONS AND REPORT 396 (1937) (citing the *Davies* case, OPINIONS OF COMMISSIONERS [UNITED STATES-MEXICAN CLAIMS COMMISSION], Sept. 26, 1928, to May 17, 1929, at 282 (1929)) (*Nota Bene*: citation should be to the *Deutz* case, *infra* note 23).

23. *Id.* at 397 (citing the *Deutz* case, OPINIONS OF THE COMMISSIONERS, *supra* note 22, at 213) (*Nota Bene*: citation should be to the *Davies* case, *supra* note 22).

24. 1 R. LILlich & B. WESTON, INTERNATIONAL CLAIMS: THEIR SETTLEMENT BY LUMP SUM AGREEMENTS 61-62 (1975) (emphasis added).

25. *Cf.* R. LILlich, INTERNATIONAL CLAIMS: THEIR ADJUDICATION BY NATIONAL COMMISSIONS 85-86 (1962).

"[p]artnership claims occur less frequently today than they did in years past, due in large part to the decline of this method of doing business abroad."²⁶ Yet, to the extent that they have arisen since World War II, as the evidence of state practice contained in the next section will reveal, they have been treated in the manner described by the above publicists.²⁷ The most recent writer on the subject of partnership claims amply confirms the continued vitality of the traditional international law rules governing such claims.

Under customary international law, . . . "both partners and partnerships are eligible claimants if they meet the nationality requirements," but partnerships are entitled to protection as entities only when all of their members are nationals of the claimant State. Hence, under the customary rule, if a single partner is a nonnational of the claimant State, the claim of the partnership will not be entertained. Owing, however, to "the conception of the severability of the interests of partners in partnership property," international tribunals have had little difficulty in disaggregating the interests of partners and in permitting "citizen partners in a firm consisting partly of nationals and partly of aliens . . . to recover their *pro rata* share of partnership claims."²⁸

III. EVIDENCE OF STATE PRACTICE

State practice concerning the claims of partnerships and members thereof dates back to the early days of the nineteenth century.²⁹ The traditional approach, described by the publicists in the previous section, was uniformly supported by those states submitting their views on partnership claims to the League of Nations. Thus the United States, responding to the questionnaire of the Preparatory Committee of the Conference for the Codification of International Law, stated in 1929 that the "preferment of partnership claims has been solely on account of those members thereof who are nationals of the claimant State."³⁰ Other replies applicable to partnership claims are as follows:

Egypt: "If there are several persons interested of different nationalities, the claim should be divided. The claimant State can only act on behalf of those who are its nationals."³¹

26. R. LILlich & G. CHRISTENSON, *supra* note 4, at 14.

27. *See generally* 1 R. LILlich & B. WESTON, *supra* note 24, at 61-63.

28. Ohly, *supra* note 4, at 291.

29. *See* 6 J.B. MOORE, A DIGEST OF INTERNATIONAL LAW 640-41 (1906). *See also* 3 J.B. MOORE, HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY 2325-31 (1898) [hereinafter J.B. MOORE, INTERNATIONAL ARBITRATIONS].

30. III *Bases of Discussion for the Conference for the Codification of International Law*, Supp. at 24, League of Nations Doc. C.75(a) M.69(a) 1929 V (1929), reprinted in 5 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 827 (1943).

31. III *Bases of Discussion*, *supra* note 30, at 142, League of Nations Doc. C.75 M.69 1929 V

Finland: "If some of the interested parties only are nationals of the State concerned, the latter cannot defend the interests of others, however awkward the results of this situation may be."³²

Germany: "The fact that some only of the individuals concerned are nationals of a given State does not prevent the latter from submitting a claim. It is understood, however, that, as regards damage suffered by private individuals reparation can only be claimed in respect of persons who are nationals of the claimant State."³³

Japan: "If some only of the individuals concerned belong to a particular State, that State should support the claim of its own people only."³⁴

Netherlands: "[T]he individuals concerned may claim their proportional share in the damage suffered."³⁵

South Africa: "If some of the complainants only are nationals of the claiming State, the latter can only press that part of the claims which concerns its nationals."³⁶

The United States has consistently maintained the position taken in its response to the League. Thus in 1937 the Department of State, in an authoritative official publication, reiterated that "[i]n determining whether a partnership is entitled to be regarded as a national and hence entitled to diplomatic protection, it is necessary to look to the nationality of the partners forming the partnership."³⁷ Again, in 1943, it stated that "[u]nincorporated companies are entitled to diplomatic protection to the extent of the ownership of their assets by bona fide American interests."³⁸

Other states have maintained the same position. Thus Great Britain, with a unique post-World War II exception mentioned below, subscribes to the view that "a firm is not an entity in English law, and that intervention and protection can only extend to individual British interests in a firm, not the firm itself."³⁹ An examination of recent French practice reveals no instance where the claim of a partnership *qua* partnership has been espoused or settled. Apparently France, too, eschews bringing such claims, at least when all the partners are not

(1929), reprinted in 2 LEAGUE OF NATIONS CONFERENCE ON THE CODIFICATION OF INTERNATIONAL LAW [1930] 564 (S. Rosenne ed. 1975).

32. *Id.*

33. III *Bases of Discussion*, *supra* note 30, at 141, reprinted in 2 LEAGUE OF NATIONS CONFERENCE, *supra* note 31, at 563.

34. III *Bases of Discussion*, *supra* note 30, at 143, reprinted in 2 LEAGUE OF NATIONS CONFERENCE, *supra* note 31, at 565.

35. III *Bases of Discussion*, *supra* note 30, at 144, reprinted in 2 LEAGUE OF NATIONS CONFERENCE, *supra* note 31, at 566.

36. III *Bases of Discussion*, *supra*, note 30, at 140, reprinted in 2 LEAGUE OF NATIONS CONFERENCE, *supra* note 31, at 562.

37. 1 M. WHITEMAN, DAMAGES IN INTERNATIONAL LAW 133 (1937).

38. 5 G. HACKWORTH, *supra* note 30, at 827.

39. J. JONES, BRITISH NATIONALITY LAW AND PRACTICE 299 n.1 (1947). Cf. 5 C. PARRY, BRITISH DIGEST OF INTERNATIONAL LAW 502 (1965).

French nationals, preferring to settle the several claims of the French partners based upon their proportionate interests in the partnership rather than a single claim brought in the partnership's name.⁴⁰

The sparseness of recent practice with respect to the claims of partnerships and members thereof may be attributed not only to the decline in this method of doing business, mentioned in the previous section, but also to the fact that most international claims in the post-World War II period have been settled by lump sum agreements, the texts of which generally are silent on the question. Thus, of the numerous lump sum agreements concluded by the United States, only five specifically authorize the claims of "legal entities" (including partnerships) organized in the United States and 50 percent U.S.-owned, a variation on the traditional international and U.S. approach to partnership claims that finds reflection in Article VII(1) of the Claims Settlement Agreement.⁴¹ Recent legislation authorizing the "preadjudication" of claims against the German Democratic Republic and Vietnam also takes this approach.⁴²

Among the other lump sum settlements, two agreements concluded by Denmark expressly mention claims by "firms or associations" and "business undertakings," phrases embracing partnership claims.⁴³ Switzerland's settlement agreements, all of which cover the claims of "commercial companies,"⁴⁴ also have been authoritatively construed to include commercial partnerships.⁴⁵ With the exception of Great Britain's agreements, to be discussed immediately below, all

40. B. WESTON, *INTERNATIONAL CLAIMS: POSTWAR FRENCH PRACTICE* 168 n.397, 169 (1971).

41. See Article 2(b) of the United States-Rumanian Agreement, Mar. 30, 1960, 11 U.S.T. 317, 318, T.I.A.S. No. 4451, 371 U.N.T.S. 163, 166, *reprinted in* 2 R. LILLICH & B. WESTON, *supra* note 24, at 217, 218; Article 3(1)(b) of the United States-Hungarian Agreement of Mar. 6, 1973, 24 U.S.T. 522, 524, T.I.A.S. No. 7569, *reprinted in* 1 R. LILLICH & B. WESTON, *supra* note 24, at 324, 325; Article 3(b) of the United States-Egyptian Agreement, May 1, 1976, 27 U.S.T. 4214, 4218, T.I.A.S. No. 8446; Article 2 of the United States-Czech Agreement, Jan. 29, 1982, *reprinted in* 21 I.L.M. 371, 372 (1982); and Article 1(B) of the United States-Ethiopian Agreement, Dec. 19, 1985, *reprinted in* 25 I.L.M. 56, 57 (1986).

42. See Titles VI & VII of the International Claims Settlement Act of 1949, *as amended*, 22 U.S.C. §§ 1644a(1)(b) & 1645a(1)(B) (1982).

43. See Article 3 of the Danish-Czech Agreement, [1960] Lovtidende C 308, *reprinted in* 2 R. LILLICH & B. WESTON, *supra* note 24, at 176, 177, and Article 5 of the Danish-Polish Agreements, Feb. 26, 1953, [1954] Lovtidende C 1, 186 U.N.T.S. 301, 305, *reprinted in* 2 R. LILLICH & B. WESTON, *supra* note 24, at 85, 87.

44. See, e.g., Article 3 of the Swiss-Czech Agreement, Dec. 22, 1949, [1950] ROLF 21, [1950] AS 21, *reprinted in* 2 R. LILLICH & B. WESTON, *supra* note 24, at 31, 32.

45. Bindschedler, *Recent Decisions in Switzerland-II*, 3 INT'L & COMP. L.Q. 512, 517-18 (1954). Cf., e.g., Article 2 of the Swedish-Hungarian Agreement, Mar. 31, 1951, [1951] S.O. No. 16, *reprinted in* 2 R. LILLICH & B. WESTON, *supra* note 24, at 56, 57 an early Swedish lump sum settlement providing for the claims of "commercial companies having their headquarters in Sweden or involving Swedish majority interests."

the remaining lump sum settlements, now numbering nearly 200,⁴⁶ give no explicit guidance on the question of claims by partnerships, much less claims by members thereof.⁴⁷

Most of Great Britain's lump sum settlements, however, expressly provide for the claims of "firms and associations. . . ."⁴⁸ Under British lump sum (as opposed to its diplomatic) practice, "customary international law has been ignored and the claims of partnerships have been permitted despite the presence of non-national partners. Indeed, in one claim [before the Foreign Compensation Commission] both partners of a firm actually were non-British, yet the FCC rendered an award in the partnership's name."⁴⁹ There is little if anything to commend this approach to partnership claims, which has been widely criticized.⁵⁰ Certainly it is not functionally oriented, since it permits Great Britain, the claimant state, to obtain compensation from a respondent state for injuries to non-British interests. No other state follows this approach, so it may be regarded as a sport. Indeed, in its normal diplomatic (as opposed to lump sum) practice, Great Britain apparently still adheres to the traditional approach.⁵¹

Swiss lump sum practice also departs from the traditional approach, although far less so than its British counterpart, in that Switzerland regards partnerships as possessing at least some of the attributes of legal personality and thus capable of having a nationality distinct from that of their members. Thus, as in the case of corporations, "certain partnerships as such are eligible for protection if the partners controlling them are Swiss."⁵² Since a partnership would not

46. See generally Lillich & Weston, *Lump Sum Agreements: Their Continuing Contribution to the Law of International Claims*, 82 AM. J. INT'L L. 69 (1988).

47. But see Article 2 of the United States-Rumanian Agreement, *supra* note 41, which mentions claims through "a partnership or an unincorporated association. . . ."

48. See, e.g., Article 1(2)(b) of the British-U.A.R. Agreement, Sept. 13, 1971, [1971] Gr. Brit. T.S. Egypt No. 1 (Cmd. 4853), reprinted in 1 R. LILlich & B. WESTON, *supra* note 24, at 315.

49. 1 R. LILlich & B. WESTON, *supra* note 24, at 63.

50. See, e.g., R. LILlich, INTERNATIONAL CLAIMS: POSTWAR BRITISH PRACTICE 34-36 (1967).

51. See *supra* note 39 and accompanying text. The latest version of the Rules Applying to International Claims published by the British Government in October 1985 provides that "HMG may take up the claim of a corporation or other juridical person which is created and regulated by the law of the United Kingdom. . . ." Rule IV (emphasis added). The phrase "juridical person" is defined in a comment to include "a company, corporation or other association having a legal personality distinct from its members. . . ." No mention is made of partnerships. Moreover, in a comment to Rule I defining the term "United Kingdom national," aside from "individuals" only "companies incorporated under the law of the United Kingdom" are covered. The Rules are reprinted in Warbrick, *Protection of Nationals Abroad*, 37 INT'L & COMP. L.Q. 1002, 1006-08 (1988).

52. Cafisch, *International Claims: Contemporary Swiss Practice*, in INTERNATIONAL CLAIMS: CONTEMPORARY EUROPEAN PRACTICE 139, 149 (R. Lillich & B. Weston eds. 1982).

be an eligible claimant under Swiss practice unless Swiss partners had a predominant interest in it, the Swiss test obviously is much less extreme than the British and, in practice, closely approximates the modification of the traditional international law approach reflected in recent United States lump sum practice and written into Article VII(1) of the Claims Settlement Agreement.

The above practice aside, available data about how claimant states adjudicate claims following lump sum settlements suggest that they have followed the customary international law rule in their distribution process. Thus in Austria, whose lump sum agreements do not specifically mention the claims of partnerships or partners thereof, Professor Seidl-Hohenveldern has found that "[t]he Austrian Distribution Laws provide that, where a measure by the respondent State affected a partnership, compensation is due to to the Austrian natural or juridical persons in proportion to their part in the partnership as it existed at the time the measure was taken."⁵³

In concluding this section on state practice, it should be recalled that, even if a partnership claim *qua* partnership claim fails under either the traditional approach (all partners not being claimant state nationals), British lump sum practice (partnership not registered in the U.K.), Swiss practice (Swiss partners lacking control or predominant interest), or recent United States lump sum practice (50 percent U.S. ownership interest lacking), the individual partners themselves still have the option of bringing claims on their own behalf based upon their proportionate interests in the firm.⁵⁴ Thus under any of these tests — as well as under the test found in Article VII(1) of the Claims Settlement Agreement — partners are not dependent upon the partnership establishing claimant state nationality to obtain redress.⁵⁵ Similarly, claimant state partners in respondent and third state partnerships always are able to bring claims for their *pro rata* interests in such partnerships.⁵⁶ The decisions of international tribunals on this latter point, from which the opinions of publicists and much of the state practice mentioned in the above two sections derives, will be examined in the section that follows.

53. Seidl-Hohenveldern, *International Claims: Contemporary Austrian Practice*, in *INTERNATIONAL CLAIMS: CONTEMPORARY EUROPEAN PRACTICE*, *supra* note 52, at 31.

54. See, e.g., R. LILLICH, *supra* note 50, at 36 n.54.

55. See Claim of Ralph E. Gassman et al., 1981 FCSC Ann. Rep. 89.

56. Interview with Hon. Desmond Kerr, Head, Claims Department, Foreign and Commonwealth Office, in London (Mar. 2, 1984); Telephone interview with Prof. Lucius Caflisch, Graduate Institute of International Studies, in Geneva (Mar. 9, 1984).

IV. DECISIONS OF INTERNATIONAL TRIBUNALS

Numerous decisions of international tribunals invoke the traditional rule that partnership claims *qua* partnership claims are compensable only if all the partners are claimant state nationals. Thus in the *Massardo, Carbone & Co.* case,⁵⁷ decided by a commission established under a 1903 protocol between Italy and Venezuela, where there was some initial confusion about whether the claim was being brought by the partnership itself or by the surviving partners and their heirs, Umpire Ralston ruled that "[i]f it is designed to claim for the entire partnership, the names of all should be given, together with the appropriate proofs of citizenship, for only Italian subjects may have any interest in any claim passed on by this Commission."⁵⁸ Although examples will be given below, it is worth noting now that if such proofs had not been forthcoming, the surviving Italian partners would have received awards based upon their proportionate interests in the partnership. As Umpire Ralston, writing in his private capacity some years later, remarked: "Other claims in the condition of having diverse citizenship among the members of the partnership were presented before the Italian-Venezuelan Commission, and awards were given proportionate to the amount of the Italian interest, no suggestion having been made on the part of Venezuela that their domicile in Venezuela had created Venezuelan citizenship in the partnerships."⁵⁹

In the *Deutz* case,⁶⁰ the United States-Mexican Commission had before it a claim by Adolph Deutz and Charles Deutz, a copartnership, doing business under the firm name of A. Deutz and Brother. The Commission allowed the claim after the U.S. citizenship of both partners was established.⁶¹ Again, in the *Wellington, Sears & Co.* case, where a claim was made by "a partnership composed of American citizens" based upon the requisition by Turkish military authorities of 10 bales of cotton duck in 1914, Commissioner Nielsen, adjudicating claims pursuant to a lump sum agreement between the United States and Turkey, ruled that the partnership was an eligible claimant since all the partners remained United States nationals. "The membership of the firm has changed since that date, but, account being taken of provisions of partnership agreements entered into from time to time, it is believed that compensation may properly be paid to the partnership

57. J. RALSTON, VENEZUELAN ARBITRATIONS OF 1903, at 706 (1904).

58. *Id.* at 709-10, reprinted in 5 G. HACKWORTH, *supra* note 30, at 828.

59. J. RALSTON, *supra* note 18, at 140.

60. See *supra* note 23.

61. *Id.*

as now constituted.”⁶² Finally, for present purposes, the *Arbuckel Brothers* case⁶³ illustrates the routine application of the traditional rule: there a claim by a firm whose partners all were United States nationals was allowed in the firm’s name.

When all the partners are *not* claimant state nationals, precluding the allowance of a claim in the partnership’s name, international tribunals consistently have rendered awards to claimant state partners based upon their *pro rata* interests in the firm, as the extract from Ralston quoted above reveals.⁶⁴ One of the earliest such decisions was handed down by the national commission established to adjudicate United States claims against Mexico following the 1848 Treaty of Peace with Mexico.⁶⁵ The question was whether to allow the claim of a United States citizen who was a member of a Mexican partnership. The commission held that, since the claimant himself was a United States national, “his interest in the claim is therefore within the cognizance of the Board, and he is entitled to an award to the extent of his interest in so much of the claim as the Board shall decide to be valid under the treaty.”⁶⁶

The above commission, in the *Morrison* case,⁶⁷ where it denied the claim by the surviving British partner of a firm doing business in Mexico, the other partner of which was a United States citizen, gave the following explanation of its rationale in such cases: “This principle of the law of nations which confers upon the members of a firm different rights according to their several national characters has been frequently recognized by judicial decisions in cases of prize.”⁶⁸ After quoting a leading authority on prize law for this principle, the commission concluded that “[a]ccording to the principle laid down in this authority it is proper to award to the American member of the firm an indemnity equal to his share of the property destroyed, while the other member, not being a citizen of the United States, can claim no portion of the indemnity which the United States has procured for its own citizens alone.”⁶⁹

62. F. NIELSEN, *supra* note 22, at 459.

63. AMERICAN-MEXICAN CLAIMS COMMISSION, REPORT TO THE SECRETARY OF STATE 237 (1948).

64. See *supra* note 18 and accompanying text.

65. United States-Mexico Treaty of Peace, Feb. 2, 1848, 9 Stat. 922, T.S. No. 207.

66. 2 Opinions: Commissioners on Claims Against Mexico 960 (manuscript), quoted in R. LILlich, *supra* note 25, at 85.

67. 3 J.B. MOORE, INTERNATIONAL ARBITRATIONS, *supra* note 29, at 2325.

68. *Id.* at 2327.

69. *Id.* Accord Hargous case, *id.*; Homan case, 4 J.B. MOORE, INTERNATIONAL ARBITRATIONS, *supra* note 29, at 3409.

Numerous decisions by other international arbitral tribunals have applied this principle. A sampling follows:

Brach case:⁷⁰ Claim involved Mexico's seizure of "a debt due from one Guadalupe Gonzales to a neutral house of which the claimant was a partner owning a one-third interest."⁷¹ The claimant, being a United States citizen, was rendered an award based upon one-third of the debt.

Jennings, Laughland & Co. case:⁷² Claim by a partnership with a United States and a British partner. "They were in partnership, but what share each had in the business there is no evidence to show; but if the umpire had thought proper to award compensation on account of the claim, it would only have been to Jennings, as a citizen of the United States, the same proportion of the compensation as his share in the business bore to the whole of it."⁷³

Ruden case:⁷⁴ Claim by a United States citizen, who with a national of New Grenada had an equal interest in a partnership owning property in Peru, allowed "based on the losses sustained by the company of which Ruden was a partner. . . ."⁷⁵ The compensation awarded was calculated upon the claimant's one-half interest in the firm.

Poggioli case:⁷⁶ Claim before the Italian-Venezuelan Commission by two Italians doing business in Venezuela under the firm name of Poggioli Hermanos. One had died leaving only Venezuelan heirs. "It appears . . . that Silvio Poggioli's [the surviving Italian partner's] interest amounted to 65.99 per cent of the whole, and all allowances made on account of injuries to the partnership are to be represented by an award of this percentage in favor of Silvio Poggioli. . . ."⁷⁷

Davies case:⁷⁸ Claim originally filed before the United States-Mexican Commission in the name of "Samuel Davies and John W. Vincent, a partnership." When the United States nationality of Vincent could not be established, claim was refiled in the name of Davies, who had an undivided one-half interest in the firm, with the amount of damages claimed reduced by one-half. Claim allowed in this amount, representing the proportionate interest of the partner whose United States nationality was proved.

Spillane case:⁷⁹ Claim of partnership formed under Mexican law denied, but British-Mexican Commission saw no objection to a claim filed in the

70. 3 M. WHITEMAN, *supra* note 37, at 2021 (1943).

71. *Id.*

72. 3 J.B. MOORE, INTERNATIONAL ARBITRATIONS, *supra* note 29, at 3135.

73. *Id.* at 3136.

74. 2 M. WHITEMAN, *supra* note 37, at 1426 n.220 (1937).

75. *Id.*

76. J. RALSTON, *supra* note 57, at 847.

77. *Id.* at 871. *Accord* Baasch & Romer case, *id.* at 906 (Netherlands-Venezuelan Commission rendered an award proportionate to the interests of Dutch members of a partnership in liquidation).

78. OPINIONS OF THE COMMISSIONERS [UNITED STATES-MEXICAN CLAIMS COMMISSION], *supra* note 22.

79. FURTHER DECISIONS AND OPINIONS OF THE [BRITISH-MEXICAN] COMMISSIONERS 72 (1933).

name of the partners.⁸⁰

Poisson case:⁸¹ Claim by United States citizen for damages to and expropriation of property owned by a partnership in which claimant and a British national had equal interests. Commission rendered award to claimant based upon his "joint-ownership interest in the property. . . ."⁸²

Finally, last but not least, mention should be made of three oft-cited claims where United States partners in respondent state partnerships obtained awards based upon their proportionate interests in the firms involved. In the first of these claims, the *Alsop* case,⁸³ the United States espoused the claim of the surviving partners of *Alsop & Co.*, a partnership formed and registered in Chile, composed of ten members, all U.S. citizens. Chile argued that, as the firm was registered in Chile and hence, under the law of Chile, was a juridical person distinct from its members considered individually, their grievances could not properly be the subject of a diplomatic claim. In reply, Secretary of State Knox responded as follows:

It is indeed true that *Alsop & Co.*, in order that it might do business in Chile, registered under the Chilean law, and in this sense became a Chilean partnership; but it should be remembered that the partners were all American citizens, that they were investing in their enterprise American capital, that the losses suffered have fallen upon American citizens, and that such losses have involved the destruction of American capital and enterprise. . . . To contest the right of the Government of the United States to intervene in behalf of the injured American partners in such a partnership, under such conditions, for the loss of American capital, would be to contest the fundamental right of the Government of the United States to intervene in behalf of its citizens — a proposition for which the Government of Chile would not, the Government of the United States feels, for a moment contend.⁸⁴

In the event, it was agreed to submit the dispute to the King of Great Britain as an *amiable compositeur*. When Chile again renewed her argument, the King was advised to disregard it.⁸⁵ He did and proceeded to render a substantial award in favor of the United States partners in the firm.

The second claim to receive widespread attention in legal circles was the *Ziat, Ben Kiran* case,⁸⁶ where a British partner in a Spanish

80. *Id.* at 79, reprinted in 5 G. HACKWORTH, *supra* note 30, at 828. *Accord* *Stevens & Gibb* case, *id.* at 191; *Adams* case, *id.* at 199.

81. AMERICAN-MEXICAN CLAIMS COMMISSION, *supra* note 63, at 288.

82. *Id.* at 290.

83. The *Alsop* Claim (U.S. v. Chile), 11 R. Int'l Arb. Awards 349 (1911).

84. 5 G. HACKWORTH, *supra* note 30, at 829.

85. 11 R. Int'l Arb. Awards, *supra* note 83, at 360, reprinted in 5 G. HACKWORTH, *supra* note 30, at 830.

86. *Ziat, Ben Kiran* Case (Gr. Brit. v. Spain), 2 R. Int'l Arb. Awards 729 (1924).

firm that had suffered losses during a government-inspired riot brought a claim based upon his proportionate share in the partnership. Spain, like Chile in the *Alsop* case, contended that the firm was a juridical person possessing Spanish nationality and hence claims brought by partners thereof were not receivable. Judge Huber, the arbitrator, rejecting the notion that Spanish municipal law concepts as to the status of partnerships operated on the international plane, upheld the right of the British partner to claim for his proportionate share and proceeded to consider the claim on its merits.⁸⁷

Finally, the *Shufeldt* case⁸⁸ involved a concession contract between Guatemala and private individuals that required the latter to form a partnership under the laws of Guatemala to operate the concession. When Guatemala nullified the concession contract, Shufeldt, a United States citizen, who was a member of the partnership, prevailed upon his government to espouse his claim. When it came to arbitration, Guatemala argued that

notwithstanding that Shufeldt may have acquired rights under the contract in the first instance, yet by forming the company required to be formed under the contract . . . , and assigning to such company all his rights under the contract, he has divested himself of all his rights and vested them in the company Shufeldt & Company, and that Shufeldt "has no rights under the contract which he could either enforce by action in courts of law or by invoking the aid of the United States as an American citizen."⁸⁹

The arbitrator, Chief Justice Sir Herbert Sisnitt, rejected this argument, stating that

it is not the rights of the partnership that are in question but the personal interest of Shufeldt in the partnership. . . . International law will not be bound by municipal law or by anything but natural justice, and will look behind the legal person to the real interests involved.⁹⁰

Accordingly, he found the claim to be espousable and rendered an award to Shufeldt based upon his proportionate interest in the Guatemalan partnership.

In concluding this section on the decisions of international tribunals — almost all of which were rendered pursuant to *compromis* containing general standards and hence reflect customary international law rather than *lex specialis* — it should be noted that, although the International Court of Justice has not had occasion to pass upon the questions addressed herein, the present writer is confident beyond a

87. *Id.* at 729-30.

88. *Shufeldt Claim* (Guat. v. U.S.), 2 R. Int'l Arb. Awards 1079 (1930).

89. *Id.* at 1097.

90. *Id.* at 1097-98.

doubt that it would resolve them in similar fashion. Support for this belief is found in the fact that in the *Nottebohm* case⁹¹ Guatemala apparently never even raised the question of whether Liechtenstein had standing (substantive standing, that is, not the procedural standing issue on which the case was decided) to bring Nottebohm's claim, grounded as it was principally upon his interest in a Guatemalan partnership, Nottebohm Hermanos. Guatemala obviously had learned the teaching of *Shufeldt* and calculated that the Court had too. Certainly today, were it faced with the claim of a partnership or a member thereof, the Court would brush aside spurious appeals to municipal law and harken to Chief Justice Sisnitt's injunction in his *Shufeldt* Award: "International law will not be bound by municipal law or by anything but natural justice, and will look behind the legal person to see the real interests involved."⁹²

Nor is there anything in the Court's Judgment in the *Barcelona Traction* case⁹³ to suggest a contrary result. First, *Barcelona Traction* involved corporation and stockholder questions, not questions of partnerships and partners.⁹⁴ Second, even if the claims of stockholders and partners, *arguendo*, are analogous, the Court in *Barcelona* held only that indirect stockholder claims were impermissible, its comments on direct stockholder claims being pure *dictum*. Since claimant state partners predicate their claims upon their direct interests in the partnership, the Court's holding has little or no relevance to the questions at hand. Third, both the holding and the *dictum* in *Barcelona* were based upon the assumption (erroneous, in the present writer's opinion) that there was no customary international law governing stockholder claims and hence resort must be had to municipal law norms.⁹⁵ Here, as this article already has demonstrated, there are ample customary international law precedents indicating that partners may bring claims based upon their *pro rata* interests in ineligible partnerships. Finally, as already made clear by the quotations from Professor Borchard at the beginning of Section II,⁹⁶ the underlying rationale behind the diplomatic protection of corporations/stockholders and partnerships/partners is both different and non-transferrable. As a former President of the International Court of Justice, Jimenez

91. *Nottebohm Case (Liech. v. Guat.)*, 1955 I.C.J. 4 (Judgment of Apr. 6).

92. See *supra* note 90 and accompanying text.

93. *Barcelona Traction, Light & Power Co. (New Application: 1962) (Belg. v. Spain)*, 1970 I.C.J. 1 (Second Phase, Judgment of Feb. 5).

94. See *infra* note 97 and accompanying text.

95. See Lillich, *The Rigidity of Barcelona*, 65 AM. J. INT'L L. 522 (1971).

96. See *supra* notes 15-17 and accompanying text.

de Aréchaga, in discussing the diplomatic protection of stockholders in corporations, states with reference to the cases set out above involving partnerships:

Other awards are invoked . . . but these arbitral decisions are not relevant to the question here examined, since they all refer, not to business corporations or companies by shares, but to partnerships and limited partnerships, that is to say, to various forms of *sociétés personnelles*, whose legal personality is not so distinct nor generally recognized by all systems of law, particularly by the common law countries. International precedents which may have been established with respect to partnerships, limited partnerships, and other forms of *sociétés personnelles* cannot be simply extended to business corporations, companies by shares, and other forms of *sociétés de capital*. Legal personality is much stronger, more generally recognized, and better differentiated in the latter case. Even in these regimes where partnerships are considered as legal subjects, the partner is not entirely detached from the *Société* in the form in which a shareholder is detached from a corporation. This is a consequence of the basic fact that a partner is always personally and more deeply involved. . . .⁹⁷

V. CONCLUSION

In the *HAUS* case, mentioned in the Introduction,⁹⁸ the Iran-United States Claims Tribunal, having already held that U.S. partnerships had standing to claim when 50 percent or more owned by U.S. citizens,⁹⁹ faced the key question of whether a U.S. partner/participant in an ineligible partnership/joint venture had standing to bring a claim under Article VII(1) of the Claims Settlement Agreement to the extent of his *pro rata* interest in the partnership/joint venture. To have answered this question in the negative, of course, would have "non-suited" a considerable number of U.S. claimants before the Tribunal, a fact well-known to Iran and its legal counsel.¹⁰⁰ Moreover, to the extent that such a decision would have worked a change in the customary international law approach discussed in Sections II-IV, it conceivably could have left most participants in joint ventures without

97. De Aréchaga, *Diplomatic Protection of Shareholders in International Law*, 4 PHIL. INT'L L.J. 71, 86-87 (1965), reprinted in 8 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 1270 (1967).

98. See *supra* notes 11-14 and accompanying text.

99. See *supra* note 7.

100. See, e.g., Jones, *The Iran-United States Claims Tribunal: Private Rights and State Responsibility*, in THE IRAN-UNITED STATES CLAIMS TRIBUNAL 1981-1983, *supra* note 6, at 51, 71-72, where as an "alternative approach" to the traditional one set out in Sections II-IV the author suggests British postwar lump sum practice, which in his view leaves open the question of whether "a claim may be presented in respect of an injury to a partner as a result of the infringement of the rights of the partnership save where such a claim is expressly permitted by the compromis," which of course is not the case under the Claims Settlement Agreement.

any protection under the Law of International Claims in the future.¹⁰¹

Fortunately, the Tribunal in *HAUS* did not regard the joint venture agreement involved as barring the claim of the U.S. participant, a New York corporation.

While international law seems to accept that as a rule a partner may not sue in his own name alone on a cause of action accruing to the partnership, where special reasons or circumstances required it, "international tribunals have had little difficulty in disaggregating the interests of partners and in permitting" partners to recover their *pro rata* share of partnership claims.¹⁰²

Citing the *Ruden*, *Spillane* and *Ziat, Ben Kiran* cases, all discussed in the previous section,¹⁰³ the Tribunal observed that

[t]hese cases generally involved partnerships that had separate legal personality under the relevant municipal law. The rationale for allowing such partners to bring individual claims is in part that unlike shareholders of corporations — who generally may not pursue the claims of the corporation — a "partner is not entirely detached from the *Société* in the form in which a shareholder is detached from a corporation."^[104] Since this is true for partnerships having separate legal personality, *a fortiori* it applies to partnerships such as the present one that are not juridical entities.¹⁰⁵

Additionally, the Tribunal noted

that the reason most often cited for the severability of a partner's personal claims — that he would otherwise be prevented from claiming before an international forum because of a foreign partner's disability^[106] — applies in the context of the nationality requirements of the Claims Settlement Declaration. Thus, the Tribunal finds that international law, in the particular circumstances of this case, permits *HAUS* to bring a claim for its [85 percent proportionate] interest. . . .¹⁰⁷

The Tribunal's award in *HAUS* is an important reaffirmation of the customary international law approach to the claims of partners in

101. As the International Court of Justice intended stockholders to be left after *Barcelona Traction*. Fortunately, most states appear to have ignored the Judgment and continue to espouse and settle stockholder claims by lump sum agreement. See Lillich & Weston, *supra* note 46, at 78-80, for a list of recent agreements, most which permit such claims. Both direct and indirect stockholder claims, moreover, are authorized by Articles VI(1) & (2) respectively of the Claims Settlement Agreement.

102. *Housing & Urban Services Int'l Inc. v. TRC*, 9 IRAN-U.S. C.T.R. 313, 330 (1985-II) (quoting Ohly, *supra* note 28 and accompanying text).

103. See *supra* notes 74, 79 & 86 and accompanying text.

104. 9 IRAN-U.S. C.T.R. at 331 (quoting De Aréchaga, *supra* note 97 and accompanying text).

105. *Id.* at 331.

106. *Id.* at 332 (citing J. RALSTON, *supra* note 18 and accompanying text).

107. *Id.* "[T]he sources already cited — all of which permitted the claimant partner to claim only his *pro rata* share — indicate that there is widespread agreement that, where claims of individual partners for their personal interest are allowed, those claims are limited to the extent of such interest." *Id.* at 333.

ineligible partnerships and a path-breaking application of this approach to the claims of participants in similarly ineligible joint ventures. While no subsequent award of the Tribunal applying or developing the rationale behind *HAUS* has yet appeared,¹⁰⁸ its significance on other pending joint venture claims has not gone unnoticed, for it surely has been a factor producing a good number of awards on agreed terms.¹⁰⁹ It can be assumed too that its impact eventually will extend well beyond the confines of the Tribunal.

To sum up, then, there is no doubt that the Tribunal's awards in *HAUS* and other cases have greatly helped to clarify the status of partnership, and especially joint venture, claims under international law.¹¹⁰ The present writer's views on the various problems raised by such claims have been stated throughout this article, appear to be amply documented by the authorities reviewed in Sections II-IV, and hence need no elaborate restatement here. Put briefly, they are as follows:

A. Customary international law permits partnership claims *qua* partnership claims (and by analogy would permit claims by joint ventures) only when all the members of a partnership (or all the participants in a joint venture) established in a claimant state are nationals of that state.

1. Postwar British lump sum practice (as opposed to its diplomatic practice), permitting the claims of partnerships registered in Great Britain without regard to the nationality of their partners, is a unique exception to the general rule that has little to commend it.
2. Postwar Swiss lump sum practice, permitting the claims of Swiss partnerships when Swiss partners have predominant interests therein, constitutes a functional variation on the general rule but is reasonably compatible with it.
3. Article VII(1) of the Claims Settlement Agreement, which authorizes partnership and joint venture claims when the entity involved has been organized under claimant state law and is 50 percent claimant state-owned, also constitutes a functional varia-

108. For an earlier award allowing a U.S. corporation that was a participant with a French corporation in a 50-50 joint venture to claim for its one-half share of damages sustained by the joint venture, see *Morrison-Knudsen Pacific Ltd. v. Iran*, 7 IRAN-U.S. C.T.R. 54, 66 (1984-III).

109. See, e.g., *Morrison-Knudsen Int'l Co. v. Iran*, 9 IRAN-U.S. C.T.R. 357 (1985-II) (award of \$4.9 million based upon claimant's 40 percent and 45 percent interests in two non-U.S. joint ventures). For the record, the present writer submitted an expert opinion on behalf of the claimant in this case.

110. Primarily with respect to the impact of the nationality requirement upon such claims. For other closely linked issues that may require clarification in the future, see Jones, *supra* note 100, at 71 n.84.

tion on the general rule — derived from recent U.S. lump sum and “preadjudication” practice — that has been applied routinely by the Tribunal.¹¹¹

B. Customary international law permits claimant state partners and participants in ineligible claimant state as well as respondent or third state partnerships and joint ventures to bring claims based upon their *pro rata* interests in the partnership or joint venture.

1. The fact that a partnership or joint venture established in a non-common law state may have attributes of legal personality does not preclude the application of the above rule, since international tribunals and foreign offices uniformly have looked to customary international law and, without exception, have not regarded themselves bound by municipal law concepts.

2. Since the interests of partners in a partnership are severable, an injury to a partnership constitutes a direct injury to each of its partners. By analogy, an injury to a joint venture should be treated as a similar direct injury to each of its participants.

3. The extent of this direct injury to a given partner or participant is measured by the extent of his interest in the partnership or joint venture. The *pro rata* approach to valuing the claims of partners and participants has been followed consistently by international tribunals and foreign offices.

111. See *supra* note 7 and accompanying text. Note that in the cases where the Tribunal has rendered awards in favor of U.S. partnerships, the U.S. ownership interests therein have substantially exceeded the 50 percent minimum requirement. However, in a case involving a joint venture claim under the Vietnam Claims Program, *supra* note 42, the Foreign Claims Settlement Commission, after a rehearing, allowed an award where the U.S. ownership interest barely exceeded the statutory 50 percent minimum. Claim of Pecten Vietnam Co., 1985 FCSC Ann. Rep. 11, 11-12. Obviously, the lower the U.S. (or other claimant state) ownership interest in an ineligible partnership or joint venture under this approach, the less functional and hence less desirable it becomes. See generally Note, *The Jurisprudence of the Foreign Claims Settlement Commission: Vietnam Claims*, 27 VA. J. INT'L L. 99, 115-19 (1986).