As noted earlier, the Decision in A/18 holds that the Tribunal has jurisdiction over the claim of a dual Iran-United States national if he can establish, *inter alia*, that his dominant nationality ‘during the relevant period’ was that of the claimant State.¹ The Decision then describes the relevant period: ‘from the date the claim arose until 19 January 1981’.² This requirement of continuous nationality originates not from the Decision, but from the Declarations, where ‘claims of nationals’ are defined as

claims owned continuously, from the date on which the claim arose to the date on which this Agreement enters into force [19 January 1981], by nationals of …³

It will be recalled that the issue before the Full Tribunal in A/18 was, exclusively, the interpretation of the term ‘national’ in the pertinent provisions of the Algerian Declarations. And what the Tribunal there said was that in relation to a dual national, the term ‘national’ meant a ‘dominant national’. Other jurisdictional requirements of the Declarations were therefore not affected by the Decision. This is a point confirmed by the Tribunal on many occasions. Thus, for instance, the Award in *Hakim v. Iran* states with reference to the date on which a claim arises and 19 January 1981, that:

These two dates determine the jurisdiction of the Tribunal, since Article VII, paragraph 2, of the Claims Settlement Declaration states, in part, ‘‘claims of nationals’ of Iran or the United States, as the case may be, means claims owned

² *Ibid*.
³ Claims Settlement Declaration, Article VII (2).
The Relevant Period

continuously, from the date on which the claim arose to the date on which this Agreement enters into force, by nationals of that state …

The corollary of this is, that a claimant with dual nationality is required to establish his dominant nationality of the claimant State as from the very beginning, and then throughout, the relevant period, in exactly the same way as a claimant with a single nationality is required to establish his nationality of the claimant State from the beginning, and then throughout, the said period. The point, however, is not clearly reflected in the formulation of the issue by the Full Tribunal or in the similarly worded formulations by the Chambers in the Cases before them, as will be noted shortly. But before that, a few words about the concept in customary international law.

5.1 The Requirement of Continuous Nationality in International Law

In general, the capacity of a State under international law to adopt the claim of an injured person requires, first, the proof of the nationality of the claimant State at the time of the alleged injury, and second, the uninterrupted continuity of such nationality for sometime thereafter.

The first requirement is universally admitted, even by those who challenge the requirement of continuity. It is based on the fact that in presenting a claim, the State does not act as a ‘claim agent’, but for the protection of its own interests:

[I]n taking up the case of one of its nationals, by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its

5 For a few exceptional cases in which protection may be exercised in relation to non-nationals, see: Francisco Orrego Vicuña, Interim Report on ‘the Changing Law of Nationality of Claims’, in International Law Association, Report of the 69th Conference (2000), published by the International Law Association, at 636-7; I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW, 6th Ed., Oxford: Oxford University Press, 2003, at 459-60. It must be emphasized that these are in reference to diplomatically protected claims only. Outside that area, even the very requirement of nationality may be dispensed with, as, for instance, in the case of NAFTA claims, where ‘permanent residency’ is at times a sufficient qualification. See page 58, footnote 12, above.
6 In relation to a 1947 Agreement between the United States and Italy (commonly known as the Lombardo Agreement of 1947), the United States Congress passed legislation