Such was the treatment of the issue – the claims of dual nationals of Iran and the United States against Iran – by the Tribunal. The main features of this treatment having now been examined, thoughts may be focused in this final Chapter on the possible future impact of the Tribunal’s jurisprudence. The question, to be more precise, is whether and to what extent the precedent thus set by the Tribunal is likely to influence the international claims of nationals of both the claimant and the respondent States and, through that, the law of state responsibility in general. With the number of dual nationals ever increasing, now running globally at hundreds of millions, the issue is obviously of some significance.

The answer to the query, it is suggested, very much depends on the results of three considerations, namely: the status of the law prior to the Tribunal’s jurisprudence; the authority of the Tribunal itself; and the intrinsic value of what the Tribunal advocated. This is because it is where the law is unsettled, the forum is weighty, and the jurisprudence is sound that the impact is likely to be the greatest. Each of these will now be briefly addressed, though some have already been discussed for other purposes.

8.1 The Status of the Law Prior to the Tribunal’s Involvement

This much is rather clear that, contrary to the parties’ contention in A/18, the law on the subject prior to the Tribunal’s involvement was anything but settled. Indeed, the very fact that to one party this settled law was the rule of non-responsibility, while to the other it was the rule of dominant nationality, does by itself demonstrate the controversial status of the law as it then existed. This is further

1 As noted, there is nothing in the Tribunal’s jurisprudence dealing definitively with the different case of a claimant possessing the dual nationality of the claimant State and a third State.
supported by a number of commentators who in their exhaustive studies have consistently concluded that historically, each of the two rules of non-responsibility and dominant nationality has always had its adherents, even though as from the beginning of the twentieth century, the rule of non-responsibility became the primary rule of general international law.²

It will be recalled that the Tribunal in A/18 does not take issue with this view of the earlier law. What it does, instead, is to suggest that because of two 1955 judgments in Nottebohm and Mergé, the primacy of the rule of non-responsibility was decidedly reversed in favour of the rule of dominant nationality. As suggested earlier, such a reading of those two judgments is unsupported. First, although Nottebohm has had its supporters,³ it has been most vigorously attacked by others.⁴ Here is but one example of the latter, where the author at the end of a detailed and well-argued article concludes that Nottebohm’s doctrine of genuine link separates nationality from its recognition by other states, replaces a clear and objective criterion by vague and subjective criteria, severs nationality from diplomatic protection, dilutes diplomatic protection, contains no definition, makes it possible to deprive an individual of the only legal remedy he has, threatens millions of persons with statelessness, makes the diplomatic protection of nationals domiciled abroad for business activities questionable, and … tears apart the unity of the institution of nationality and separates the different aspects of diplomatic protection. Its over-all effect would, therefore, be international uncertainty and insecurity.⁵

The judgment is there further characterized as ‘judicial legislation stricto sensu’, and one that ‘has, up to now, no chance of becoming international law; the municipal legislation and practice of many states is opposed to it, writers continue

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³ See, e.g., Brownlie, who states that ‘there is no reason to believe that the general principle of effective nationality is not ‘a permanent feature of the landscape’. The Relations of Nationality in Public International Law, 39 BYIL (1963), 284, at 363.
