

The finality of arbitral awards in the public international law*

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Abstrakt The ultimate aim of the international arbitration is to end the dispute absolutely. Therefore, the arbitral award should be final determination of the rights and obligations of the disputants. But the arbitral procedure evolved through the last one and half century from the absolute finality of the award to the slightly limited version where the disputants can introduce measures of reopening the case. These measures are common in general arbitration treaties but can be introduced also into the special agreements. However, the parties are still in control of the finality of the award. There is no general possibility to reopen the award under the general international law.

Klíčová slova arbitral award, finality, revision, reopening

1. INTRODUCTION

The peaceful settlement of disputes among states and other subjects of international law, like intergovernmental organizations, can take many various forms.¹ One of them, still used², is arbitration. Arbitration is a legal mean of dispute settlement determining the differences between the disputants through a legal decision of one or more arbitrators – the tribunal other than the permanent international court or tribunal, like International Court of Justice of International Tribunal for the Law of Seas.³ The outcome of the services of the

arbitrators is an arbitral award which should be the final determination of the legal status between the disputing parties.

In general, during the history of the arbitration, the arbitral awards have been honoured. It can be explained either as a proof of “effectiveness” of public international law or rather as a consequence of fact that the parties who chose arbitration to solve their differences had already decided to comply with the outcome irrespective of its content.⁴ But with the expansion of legal means of dispute settlement, and in this case with the expansion of arbitration, the change in the attitudes of the parties to the dispute could be recognized. The disputes are not conducted only among the “good losers”, term used by prof. Reisman to characterize the parties that had discounted the possible loss against the benefit of a firm decision of the dispute even before the final award was rendered.⁵ Such trend can be marked especially in the international investment arbitration which increased remarkably over the last few decades. The annulment procedures increased and the investment arbitration tends to become two-tiered system.⁶ The arbitration between states or states and intergovernmental organizations is not so frequent but still there are examples of the cases when one of the parties was not satisfied with the result and challenged the validity or the content of the award.⁷

The existence of the challenges against the arbitral awards is contrary to the view that the decision of the arbitral tribunal is final. The notion of finality of an award indicates that the arbitration is only one tier system of dispute settlement. On the other hand, the

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¹ Charter of the United Nations. 892 UNTS 119. Art. 33.

² See e.g. the list of currently pending cases administered by PCA on http://pca-cpa.org/showpage.asp?pag_id=1029 or *Arbitration Agreement between the Governments of the Republic of Slovenia and the Government of the Republic of Croatia 4 November 2009* [online]. [cit. 2010-05-18] Available at: <http://www.vlada.si/fileadmin/dokumenti/si/projekti/2010/Arbitrazni_sporazum/10_a_Arbitra%C5%BEni_sporazum_-_podpisan_EN.pdf>.

³ COLLIER, John G a Vaughan LOWE. *The settlement of disputes in international law: institutions and procedures*. Oxford:

Oxford University Press, 1999, 395 s. ISBN 978-019-8299-271. p. 31.

⁴ REISMAN, W. M. *The supervisory jurisdiction of the international court of justice: international arbitration and international adjudication*. Hague: M. Nijhoff, 1997. ISBN 978-904-1104-410. p. 42.

⁵ Ibid. p. 221.

⁶ COLLIER, John G a Vaughan LOWE. *The settlement of disputes in international law: institutions and procedures*. Oxford: Oxford University Press, 1999, 395 s. ISBN 978-019-8299-271. p. 72.

⁷ E.g. *Orinoco Steamship Company Case* (Venezuela/United States, 1910) [online]. [cit. 2011-12-15] Available at: <http://www.pca-cpa.org/showfile.asp?fil_id=175>. *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*. ICJ Rep. 1960, 192. *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*. ICJ Rep. 1991, 53.

cases where the disputants sought another level in order to correct or even annul the award indicates that the finality of an award is not ultimate and there are possibilities under the international law to move the dispute to the another tier. The situations when the finality is questioned includes e.g. the dispute whether the case was decided correctly on the ground of later discovered evidence, the dispute over the nature of obligations imposed on the losing party or the dispute over the correct meaning of the decision.⁸

The purpose of this paper is to examine the notion of the finality of an arbitral award under the general public international law.

2. MEANING OF FINALITY OF AWARD

The finality of an arbitral award is linked with the authority of the *res iudicata*. Accordingly, the finality of the award ensures the integrity and the authority of the award.⁹ The notion of *res iudicata* has traditionally three elements for identification of the decision – *persona*, *petitum*, *causa petendi*.¹⁰ When these three elements – the disputants, the claim and the facts which are the grounds of the case, are the same in the subsequent proceedings as in the decision already made, the subsequent reopening of the case in merits is not permitted.¹¹ When examining the meaning of *res iudicata*, the International Court of Justice stated that this principle means that the rendered decision is final in the sense that cannot be reopened by the parties on the merits – the issues determined by the judgment.¹² The only possibility for the reopening lies in the exceptional procedures specially established for this purpose.¹³ The Court then identified two purposes for the existence of the principle of *res iudicata* – the necessity for the stability of the legal relations to end the litigation (to end the dispute by decision of the Court) and the interest of the each party to the dispute that the already adjudicated issue would not be argued again.¹⁴ In this context it is necessary to say that the binding authority of an arbitral award is granted not only by an agreement of the parties to compromise but also by the general international law. And in the case an award is rendered in violation to the fundamental principles of the law governing the proceedings, the award cannot be binding on the parties.¹⁵

3. REASONS IN FAVOUR AND AGAINST THE FINALITY

The possibility to include some kind of revision of an arbitral award and therefore limits the extent of the finality of such award occurred

⁸ ROSENNE, Shabtai. *Interpretation, revision, and other recourse from international judgments and awards*. Boston: Martinus Nijhoff Publishers, 2007, 200 s. ISBN 90-041-5727-1. p. 1.

⁹ Ibid. p. 5.

¹⁰ *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)*. PCIJ Ser. A No. 13. Dissenting opinion by M. Anzilotti. p. 23.

¹¹ COLLIER, John G a Vaughan LOWE. *The settlement of disputes in international law: institutions and procedures*. Oxford: Oxford University Press, 1999, 395 s. ISBN 978-019-8299-271. p. 177. CARLSTON, Kenneth S. *The process of international arbitration*. New York: Columbia University Press, 1946. p. 205.

¹² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgement of 26 February 2007. ICJ Rep. 2007, 43. § 115.

¹³ See Statute of the International Court of Justice. Art. 61. [online]. [cit. 2011-12-15] Available at: <<http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>>.

¹⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgement of 26 February 2007. ICJ Rep. 2007, 43. § 116.

¹⁵ CARLSTON, Kenneth S. *The process of international arbitration*. New York: Columbia University Press, 1946. p. 211. INTERNATIONAL LAW COMMISSION. *Commentary on the Draft Convention on Arbitral Procedure*. New York: United Nations, 1955. p. 105.

in the end of the 19th century. Until this time, there had been no general arbitral treaty allowing any kind of reopening the proceedings. During the time of the first Hague Conference in 1899 codifying to large extend the arbitral procedures, there were only two existing general arbitration treaties allowing some kind of revision – the Permanent treaty of Arbitration of 23 July 1898 between Italy and Argentina¹⁶ which was already in force and at that time unratified Anglo-American treaty.¹⁷ Even the possibility to interpret subsequently rendered decision was considered inappropriate as a measure that could change and sometimes even replaced the decision.¹⁸

At this Conference, pursuant to the proposal of the USA delegation and with strong opposition of the Russian delegation, the Art. 55 of 1899 Convention on the peaceful settlement of international disputes was introduced¹⁹. This article allows, if parties do not agree differently in the special agreement (compromise), to review the arbitral award in specific circumstances. The discussion over this proposal offers broad overview of opinions on the finality of the award.

3.1 Reasons in favour of finality

The most eloquent and high-principled proponent of the finality of the arbitral award was Mr. Martens.²⁰ His main argumentation evolved around the main aim of the arbitral proceedings – to “terminate, finally and forever between the litigating nations”²¹ “the controversy absolutely”²². Instead of solving the dispute, he saw in the possibility of rehearing the way of provoking new dissensions and inflaming passions again which instead of bringing peace destroyed it. The arbitral award does not solve mostly the dispute itself. But the execution of the arbitral award in good faith is the way how to ensure the termination of the dispute. However, in case of possibility of reopening the case (under the proposal and later on adopted provision of Hague Convention in limited time after the award was rendered, therefore there is a suspension of the power of the award), the losing party (the award-debtor²³) would engage in

¹⁶ Remarks of Mr. Holls, delegate of the USA at the 1899 Conference. Carnegie Endowment for International Peace. Division of International Law: *The Proceedings of the Hague Peace Conferences, The Conference of 1899*. New York: Oxford University Press, 1920. p. 622. INTERNATIONAL LAW COMMISSION. *Commentary on the Draft Convention on Arbitral Procedure*. New York: United Nations, 1955. p. 99.

¹⁷ Remarks of Mr. Seth Low delegate of the USA at the Conference. Carnegie Endowment for International Peace. Division of International Law: *The Proceedings of the Hague Peace Conferences, The Conference of 1899*. New York: Oxford University Press, 1920. p. 624.

¹⁸ ROSENNE, Shabtai. *Interpretation, revision, and other recourse from international judgments and awards*. Boston: Martinus Nijhoff Publishers, 2007, 200 s. ISBN 90-041-5727-1. p. 7-8.

¹⁹ The text of this article was then retained as Art. 81 of the 1907 Hague Convention.

²⁰ See his address at the Fifth Meeting on 17 June 1899 of the Third Commission on the 1899 Hague Conference. Carnegie Endowment for International Peace. Division of International Law: *The Proceedings of the Hague Peace Conferences, The Conference of 1899*. New York: Oxford University Press, 1920. p. 618 - 619.

²¹ Ibid. p. 618.

²² Ibid. p. 619.

²³ Term used by Reisman in REISMAN, W. M. *The supervisory jurisdiction of the international court of justice: international arbitration and international adjudication*. Hague: M. Nijhoff, 1997. ISBN 978-904-1104-410.

frenetic activity to find the way how to reverse the outcome. Instead of quieting down the public opinion and political discussions, the possibility of reopening would only trigger the storm of reciprocal accusations – against arbitrators and the respective governments. Also the responsibility of the arbitrators would be changed because in such situation their main role to terminate the controversy would be diminished by the possibility that there would be another round to do so.

Another voice of fear of detriment caused by the possible reopening of the case was Mr. Asser, the delegate of the Netherlands, who suggested that the force of the award would be diminished.²⁴

And in this discussion, Mr. Descamps, the delegate of Belgium, suggested that the possibility of reopening should be left for the special agreements and not in this general treaty.²⁵ His view illustrates the situation, when the states/parties to the dispute agreed themselves for that current situation on special proceedings for the arbitration.²⁶

There is also an economic argument for avoiding the possibility of re-opening the case and maintaining the situation of finality of the arbitral award. Instituting other proceedings about the re-examination of the award would extend the dispute resolution period considerably. Additionally, such possibility gives again some bargain power to the loser of the arbitration (the award-debtor) in pursuing better – favourable terms in the renegotiation of the dispute outside the legal proceedings.²⁷ Therefore, any possibility, even hypothetical, of review can create real obstacles to enforce the award. The awards are not self-enforcing and there is no international enforcement office to execute the award. The enforcement is based on the cooperation of the parties. But in case of possible review, the losing party may be put under immense pressure of diverse lobby groups and at the end of the day the award may stay unenforced.²⁸

Additionally, the arbitral tribunals are in general established *ad hoc*²⁹ and after the rendering of an award they became *functus officio*.³⁰ Therefore, by rendering the award the tribunal fulfilled its role and as there was no other body to serve the function of re-examination the award³¹, the award ended the proceedings and consequently it is final.

²⁴ Carnegie Endowment for International Peace. Division of International Law: *The Proceedings of the Hague Peace Conferences, The Conference of 1899*. New York: Oxford University Press, 1920. p. 624. p. 618.

²⁵ Carnegie Endowment for International Peace. Division of International Law: *The Proceedings of the Hague Peace Conferences, The Conference of 1899*. New York: Oxford University Press, 1920. p. 623.

²⁶ See examples in part. 5.

²⁷ REISMAN, W. M. *The supervisory jurisdiction of the international court of justice: international arbitration and international adjudication*. Hague: M. Nijhoff, 1997. ISBN 978-90-4-1104-410. p. 228.

²⁸ Ibid. p. 345.

²⁹ Exceptions were the Claims Commissions established for the longer periods and today Iran-US Claims Tribunal.

³⁰ ROSENNE, Shabtai. *Interpretation, revision, and other recourse from international judgments and awards*. Boston: Martinus Nijhoff Publishers, 2007, 200 s. ISBN 90-041-5727-1. p. 12. INTERNATIONAL LAW COMMISSION. *Memorandum on arbitra procedure*. New York: United Nations, 1950. § 97.

³¹ ILC tried to remedy this situation by referring the jurisdiction to do to the ICJ. INTERNATIONAL LAW COMMISSION. *Draft on Arbitra Procedure*. New York: United Nations, 1952. Art. 29(4).

3.2 Reasons in favour of the possibility of some kind of review

The proposal to put the provision allowing possible reopening of the case into the Hague Convention was introduced by the US delegation. The reasoning behind this proposal is to allow rectifying the most evident errors in regular and legal matters without the danger that the decision would be repudiated by the aggrieved party.³² The aim is to settle the dispute correctly. This is the limit to the aim of settling the dispute forever.³³

The requirement for the correct decision is deeply connected and reinforced with the obligation of the arbitrators to render a coherent, accurate and complete award³⁴

This seems to be the single most important argument in favour to break the absolute finality of decisions under the international law.

4. THE FINALITY OF AN AWARD UNDER THE GENERAL ARBITRATION TREATIES

It is undisputed that the states are the main lawmakers in the international law. And as such they can agree among themselves on any rule with only limitation of imperative norms³⁵ and possible obligations that arise under the UN Charter³⁶. In the context of dispute settlement, they can create any possible system of dispute settlement.³⁷ Therefore, they can create also a sophisticated system of multi-tier arbitration where the award could be examined even several times.

The revision process created by the parties in their agreement (compromise) is foreseen e.g. in the Hague Convention on dispute settlement of 1899³⁸, in the subsequent Hague Convention of 1907³⁹, in the General Act on Pacific Settlement of Disputes⁴⁰, European Convention for the Peaceful Settlement of Disputes⁴¹.

³² Carnegie Endowment for International Peace. Division of International Law: *The Proceedings of the Hague Peace Conferences, The Conference of 1899*. New York: Oxford University Press, 1920. p. 62.

³³ Carnegie Endowment for International Peace. Division of International Law: *The Proceedings of the Hague Peace Conferences, The Conference of 1899*. New York: Oxford University Press, 1920. p. 621. Mr. Holls referred to the saying of president Lincoln: „Nothing is settled until it is settled right.“

³⁴ ROSENNE, Shabtai. *Interpretation, revision, and other recourse from international judgments and awards*. Boston: Martinus Nijhoff Publishers, 2007, 200 s. ISBN 90-041-5727-1. p. 3. This obligation is usually not expressly included in the public international codes of arbitral procedure, but can be find expressly in various rules for international commercial arbitration, see e.g. Art. 41 2012 ICC Rules of Arbitration.

³⁵ Vienna Convention on Law of Treaties. 1155 UNTS 331. Art. 53.

³⁶ Charter of the United Nations. 892 UNTS 119. Art. 103.

³⁷ CARLSTON, Kenneth S. *The process of international arbitration*. New York: Columbia University Press, 1946. p. 220.

³⁸ 1899 Hague Convention for the pacific settlement of disputes. Art. 55.

³⁹ 1907 Hague Convention for the pacific settlement of disputes. Art. 83.

⁴⁰ General Act on Pacific Settlement of Disputes. 93 LNTS 343. Art. 25. Revised General Act on Pacific Settlement of Disputes. 71 UNTS 912. Art. 25.

⁴¹ European Convention for the Peaceful Settlement of Disputes. ETS 23. Art. 23.

Several of these conventions include the provision in the meaning that the award rendered is final and binding to the parties in the dispute.⁴² But as such, this is only the declaratory provision and not including it into the legal instrument does not make the award non-binding.⁴³

However, starting from The Hague Convention 1899 this is not the only provision dealing with the finality of dispute determined by the decision. The conventions stipulating the termination of the dispute by the award still allow continuing the dispute during certain period of time after the award is rendered when the new facts of certain quality⁴⁴ can trigger the reopening of the case.

The allowed period for reopening case should be either stipulated in the special agreement⁴⁵ or is expressly stated in the convention. At this time, the time limit postponing the finality of the decision is settled at the six months after the discovery of new fact (relative time-limit) combined with the period of 10 years after the decision was issued (absolute time-limit). The period of six months combined with 10 years occurs not only in the arbitration treaties but also in the statutes of the international courts⁴⁶ so it seems that this time limit is generally recognized as the sufficient⁴⁷. During Hague Conferences 1899 and 1907 even shorter period of time was proposed not to break the finality of the awards too deeply.⁴⁸ On the other hand, the report of the Advisory Committee of Jurists preparing the statute of PCIJ proposed 5 years. They consider this period as something in between too short periods discussed at The Hague Conferences and the indefinite period in the Italy-Argentina Treaty of 1907.⁴⁹

⁴² 1899 Hague Convention for the pacific settlement of disputes. Art. 54. 'an ends to the dispute definitively and without appeal'. 1907 Hague Convention for the pacific settlement of disputes. Art. 81. 'settles the dispute definitively and without appeal'. Convention on conciliation and arbitration within CSCE. 1842 UNTS 150. Art. 31(3). 'The award shall be final and not subject to appeal.'

⁴³ CARLSTON, Kenneth S. *The process of international arbitration*. New York: Columbia University Press, 1946. p. 211.

⁴⁴ 1899 Hague Convention for the pacific settlement of dispute. Art. 55. 'new fact calculated to exercise a decisive influence on the Award, and which, at the time the discussion was closed, was unknown to the Tribunal and to the party demanding the revision'.

⁴⁵ 1899 Hague Convention for the pacific settlement of disputes. Art. 55. resp. 1907 Hague Convention for the pacific settlement of disputes. Art. 83.

⁴⁶ Convention on conciliation and arbitration within CSCE. 1842 UNTS 150. Art. 31(3). Statute of the International Court of Justice. Art. 61(4). [<http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>]. Statute of the Permanent Court of International Justice. PCIJ Ser. D No. 1. Art. 61. INTERNATIONAL LAW COMMISSION. *Commentary on the Draft Convention on Arbitral Procedure*. New York: United Nations, 1955.

⁴⁷ Also in INTERNATIONAL LAW COMMISSION. *Commentary on the Draft Convention on Arbitral Procedure*. New York: United Nations, 1955. Art. 29(2).

⁴⁸ At the 1899 Hague Conference even shorter period of time was proposed – some participants deemed three months as enough. Carnegie Endowment for International Peace. Division of International Law: *The Proceedings of the Hague Peace Conferences, The Conference of 1899*. New York: Oxford University Press, 1920. p. 618-619.

⁴⁹ ADVISORY COMMITTEE OF JURISTS. *Procès-verbaux of the Proceedings of the Committee June 16th – July 24th 1920 with annexes. Annex No. I. Report*. The Hague: Van Langenhuisen Brothers, 1920. p. 744.

5. FINALITY OF ARBITRAL AWARD UNDER SPECIAL AGREEMENTS

The examples in previous section prove the general treaties are intended rather to promote the peaceful dispute settlement.⁵⁰ But the individual arbitrations are conducted mostly based on the special agreements (compromise) which should specify the procedure to be taken by the arbitration tribunal and its powers and jurisdiction. Such a special agreements are even foreseen in the general treaties listed above.⁵¹ And in these special agreements, the states rather tend to be simple in their commitment to the arbitration.⁵² To the possibility of the parties to the dispute, to craft the possible review procedures refer also the preparatory materials to the different international treaties dealing with the dispute settlement.⁵³

Consequently, when the parties wanted to include the revision into their agreements on the arbitration, they did it. The Commentary of ILC to the Arbitral procedure states some of these examples.⁵⁴ These examples included just the period of few days not even months to initiate the revision. The fairly recent decision of the arbitral tribunal on the Chile-Argentina boundary was also based on the special agreement which expressly allows revision of the award but on the limited grounds.⁵⁵

And there are examples when the special agreement did not contain provisions designating the jurisdiction to reconsider the rendered decision, such decision is final and no reopening is possible.⁵⁶ Similar view was stated by the Permanent Court of International Justice. In its advisory opinion no. 8, Permanent Court of Justice dealing with the frontier between Czechoslovakia and Poland in the Spiš region determined by the Conference of Ambassadors assimilated the decision of this Conference to the arbitral tribunal

⁵⁰ This is especially true for the Hague Conventions. See. The e.g. the statement of Mr. Holls, the representative of USA at the Hague Conference of 1899 in Carnegie Endowment for International Peace. Division of International Law: *The Proceedings of the Hague Peace Conferences, The Conference of 1899*. New York: Oxford University Press, 1920. p. 620.

⁵¹ See part 4.

⁵² See e.g. *Arbitration Agreement between the Governments of the Republic of Slovenia and the Government of the Republic of Croatia 4 November 2009* [online]. [cit. 2010-05-18] Available at: <http://www.vlada.si/fileadmin/dokumenti/si/projekti/2010/Arbitrazni_sporazum/10.a_Arbitra%C5%BEni_sporazum_-_podpisan_EN.pdf>.

⁵³ E.g. Deschamps: Carnegie Endowment for International Peace. Division of International Law: *The Proceedings of the Hague Peace Conferences, The Conference of 1899*. New York: Oxford University Press, 1920. p. 623. Art. 35 of the Swiss-Avant projet – proposal for the Constitutional Statute of the League of Nations. ADVISORY COMMITTEE OF JURISTS. *Documents presented to the Committee relating to existing plans for the establishment of a Permanent Court of International Justice*. p. 266-267.

⁵⁴ Art. 13 of compromis of 22 May 1902 (Mexico/USA) Pious Fund of the Californians. Art. 10 compromis of 27 January 1909 North Atlantic Coast Fisheries, In INTERNATIONAL LAW COMMISSION. *Commentary on the Draft Convention on Arbitral Procedure*. New York: United Nations, 1955. p. 100.

⁵⁵ *Application for revision and subsidiary Interpretation of the Award of 21 October 1994 submitted by Chile (Argentina, Chile)*. RIAA Vol. XXII. United Nations, 2006. Art. XVIII of 1991 Compromis. p. 157.

⁵⁶ *Orinoco Steamship Company Case* (Venezuela/United States, 1910) [online]. [cit. 2011-12-15] Available at: <http://www.pca-cpa.org/showfile.asp?fil_id=175>. In this case, the parties had to conclude new agreement which created another tribunal to review the award.

and stated that “in the absence of an express agreement between the parties, the Arbitrator is not competent to interpret, still less modify his award by revising it.”⁵⁷ Rossene concluded that in case the instrument on which the proceeding is based allows some kind of review that it can be conducted without further consent.⁵⁸ Consequently, if the instrument is not allowing any review, then the arbitral award is absolutely final, or at least final until the parties do not decide to replace it with their mutual agreement. But such position was criticized already in the context of the Orinoco Steamship company.⁵⁹

Quite recent, special agreement is the Croatia-Slovenia arbitration agreement dealing with their border dispute. Under the Art. 7(2) the award will be binding and constituting final settlement of the dispute. There is no reference to any revision procedures. The agreement is referring to the PCA Optional Rules⁶⁰. But these rules neither contain provisions for the revision of the award except of correction of computation, typographical or clerical errors and interpretation of the award.

Therefore, the question in this case arises whether in such situation the finality of the award is strict, or whether also awards rendered in these cases can be reviewed to some extent. The opinion stemming from the argumentation of the PCIJ and mostly rooted in the rather absolute notion of the finality of the award suggests that in these cases the award is finally and cannot be reopened. On the other hand, the wider consensus on the possibility of revision evidenced by the wide inclusion of these provisions into treaty law could lead to the possibility of revision has become a rule of general international law. But the examples provided do not allow this conclusion. In all of them, the reopening of the case was permitted by the consent of the parties.

6. THE EXTEND OF FINALITY UNDER THE GENERAL INTERNATIONAL LAW

„The international arbitral process provides a useful procedure of peaceful settlement. The international community rightly values the process. Clearly, its utility must be protected against open-ended challenges to the finality of awards. Equally clearly, it would be misconceived to seek to protect the system by suffering any serious fault in its operation to remain remediless: the preservation of the system and the vindication of its credibility are interlinked.”⁶¹

This quotation from the dissenting opinion of judge Shahabuddeen could be proper conclusion for this contribution.

As was shown, the notion of finality of the award is deeply rooted in the public international law. It started to erode slightly during the “golden era” of arbitration when the accurate balance between the need of final and absolute end to the dispute between the states in

sake of world peace was weighted by the pursue of truth in the facts triggering the dispute.

And the balance between the pursuit of the absolute termination of the dispute and the pursuit of the absolute truth was established. The truth can be pursued but only in cases strictly limited and what is more important, only in circumstances when disputants agreed on such procedures. This possibility of subsequent reopening of the decision established itself in the general arbitration and also judicial treaties. But the real application, when the arbitration is used as a mean of dispute settlement, is still limited to the express agreement of the parties.

This means that the arbitral process and its outcome are correctly protected from the open-ended challenges to its finality. But in case parties desire so, the system of rectifying the faults is available.

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⁵⁷ *Advisory Opinion of 6 December 1923 (Jaworzina)*. PCIJ Ser. B, No. 8. p. 38.

⁵⁸ ROSENNE, Shabtai. *Interpretation, revision, and other recourse from international judgments and awards*. Boston: Martinus Nijhoff Publishers, 2007, 200 s. ISBN 90-041-5727-1. p. 167.

⁵⁹ CARLSTON, Kenneth S. *The process of international arbitration*. New York: Columbia University Press, 1946. p. 220.

⁶⁰ *Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States* [online]. [cit. 2011-12-15] Available at: <http://www.pca-cpa.org/showfile.asp?fil_id=195>.

⁶¹ *Arbitral award of 31 July 1989 (Guinea-Bissau v. Senegal)*. ICJ Rep. 1991, p. 53. Separate opinion of Judge Shhabuddeen. p. 119.

17. *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*. ICJ Rep. 1991, 53.
18. *Arbitration Agreement between the Governments of the Republic of Slovenia and the Government of the Republic of Croatia 4 November 2009* [online]. [cit. 2010-05-18] Available at: <http://www.vlada.si/fileadmin/dokumenti/si/projekti/2010/Arbitrazni_sporazum/10.a_Arbitra%C5%BEni_sporazum_-_podpisan_EN.pdf>.
19. Convention on conciliation and arbitration within CSCE. 1842 UNTS 150.
20. European Convention for the Peaceful Settlement of Disputes. ETS 23.
21. General Act on Pacific Settlement of Disputes. 93 LNTS 343.
22. Charter of the United Nations. 892 UNTS 119.
23. INTERNATIONAL LAW COMMISSION. *Draft on Arbitra Procedure*. New York: United Nations, 1952. Art. 29(4).
24. INTERNATIONAL LAW COMMISSION. *Commentary on the Draft Convention on Arbitral Procedure*. New York: United Nations, 1955. p. 99.
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26. *Interpretation of Judgements Nos. 7 and 8 (Factory at Chorzów)*. PCIJ Ser. A No. 13.
27. *Orinoco Steamship Company Case (Venezuela/United States, 1910)* [online]. [cit. 2011-12-15] Available at: <http://www.pca-cpa.org/showfile.asp?fil_id=175>.
28. *Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States* [online]. [cit. 2011-12-15] Available at: <http://www.pca-cpa.org/showfile.asp?fil_id=195>.
29. Revised General Act on Pacific Settlement of Disputes. 71 UNTS 912 .
30. Statute of the International Court of Justice. Art. 61. [online]. [cit. 2011-12-15] Available at: <<http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>>.
31. Statute of the Permanent Court of International Justice. PCIJ Ser. D No. 1.
32. Vienna Convention on Law of Treaties. 1155 UNTS 331.