

مجله علوم اجتماعی و انسانی دانشگاه شیراز  
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قواعد و اصول اساسی حاکم بر داوری میان دولتها

دکتر فرهاد طلائی

دانشگاه شیراز

چکیده

این مقاله قواعد و اصولی از حقوق بین الملل را مورد تجزیه و تحلیل قرار می دهد که در زمینه داوری میان دولتها به کار می روند. ابتدا اصل حل مسالمت آمیز اختلافات بین المللی بطور کلی بررسی گردیده و روشهای گوناگون حل اختلاف در حقوق بین الملل مورد بحث قرار می گیرند. آنگاه این مقاله به موضوع داوری بعنوان یک شیوه ارادی حل حقوقی اختلافات بین المللی می پردازد. در این راستا تاریخچه داوری در حقوق بین الملل ارائه می گردد و مفهوم داوری از دیدگاه حقوقی تعریف می شود. در ادامه اصول و قواعد اساسی حاکم بر داوری میان دولتها بحث و بررسی می گردند. در ضمن شیوه‌های موجود داوری بررسی گردیده و عناصر اساسی یک موافقتنامه داوری مورد بحث قرار می گیرند. در انتها این مقاله نتیجه می گیرد که با وجود توسعه های بوجود آمده در زمینه روش های حل اختلاف در حقوق بین الملل، داوری همچنان یکی از متداولترین روشها برای حل اختلاف میان دولتها باقی خواهد ماند، بدان جهت که قواعد انعطاف پذیری بر آن حاکم است. این ویژگی بطور طبیعی ناشی از گستردگی شیوه‌هایی است که در چهارچوب داوری در دسترس دولتها می باشد و نیز ناشی از میزان کنترلی است که دولتها نسبت به این روش حل اختلاف دارند.

## **Rules And Principles Governing Arbitration Between States**

**Dr. Farhad Talaie\***  
Shiraz University

### **ABSTRACT**

This paper presents an analysis of the rules and principles of international law that apply to arbitration between States. First, the principles of peaceful settlement of international disputes in general are analyzed; then different means of dispute settlement in international law are discussed. Arbitration as a free choice of judicial settlement of international disputes is the focus of argument. The paper examines the history of arbitration in international law and defines the concept of arbitration from a legal point of view. It discusses the basic principles and rules that govern arbitration between States. The paper also examines the existing arbitration mechanisms and discusses the basic elements of an arbitration agreement (*compromis*). Finally, it is concluded that despite the developments of dispute resolution mechanisms in international law, arbitration will continue to be one of the most used methods for dispute settlement between States, due to its high degree of flexibility. This is a natural result of the extent of choices available to States and the degree of control these States have over this type of dispute resolution.

**Key Words:** 1- International Law 2- Charter of the United Nations 3- States 4- International Disputes 5- Peaceful Settlement 6- Judicial Settlement 7- Arbitration 8- Arbitral Tribunal 9- Arbitration Agreement (*The Compromis*) 10- Permanent Court of Arbitration 11- Permanent Court of International Justice 12- International Court of Justice.

### **1. Introduction**

Arbitration is one of the oldest methods of dispute settlement in the history of mankind. Arbitration was first used to peacefully settle disputes between individuals in small communities. It then became part of a civilised system for resolving disputes among parties concerned in a civilised and legal manner. Like many other national phenomena, arbitration was developed and used in international society. National principles governing arbitration were reconsidered and applied in international law. In particular, some changes and adjustments were made to these principles for the purpose of their application to disputes among States.<sup>1</sup> States may have differences concerning many aspects of international law. Accordingly, the range of disputes between States is extensive. Also, the nature of these disputes varies and States may rely on certain mechanisms to resolve their differences. As an efficient mechanism for dispute settlement, arbitration has been conducted to settle a wide range of disputes. In fact, the

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\* Assistant Professor (International Law), Faculty of Law.

range of disputes which can be subject to arbitration is not limited to certain disputes and it may cover different kinds of disputes from civil or commercial disputes among States or their corporations to disputes over land or maritime territories.<sup>2</sup>

## 2. The Principle of Peaceful Settlement of International Disputes in International Law

In the contemporary history, attempts to resolve international disputes through peaceful means began in eighteenth century when States relied on such methods as arbitration to settle their disputes peacefully. These attempts were continued in the twentieth century. States were also encouraged to avoid resorting to war as the primary means of settling their disputes.<sup>3</sup> In particular, the occurrence of World War I and then World War II proved that there is a need to create a legal obligation for States to avoid war and to settle their disputes through peaceful means.

The first international attempts to set up rules on peaceful settlement of disputes between States were the Hague Conferences. Two international peace conferences were held in the Hague in 1899 and 1907 respectively.<sup>4</sup> The first conference dealt with the problems of the maintenance of international peace, reduction of armaments, and regulating warfare. Three agreements were produced in the first conference. The first agreement (the 1899 *Convention for the Pacific Settlement of International Disputes*) was the basis for the formation of the Permanent Court of Arbitration (also the Hague Court or Tribunal) as a mechanism for optional arbitration for resolving controversial issues among nations. The second and third agreements concerned the regulation and improvement of laws and customs of warfare. The second conference was a continuation of the first conference in order to establish more clear rules on the issues discussed in the first conference. As a result the second conference produced 13 agreements on rules of war and dispute settlement, including the 1907 *Convention for the Pacific Settlement of International Disputes*.<sup>5</sup>

Adoption of the Covenant of the League of Nations in 1919 was another main step towards the establishment of the principle of peaceful settlement of international disputes. In particular, Article 12 of the Covenant provided that in the case of a dispute causing a rupture, States had to resort to such peaceful means as arbitration, adjudication, or submission of the dispute to the Council of the League of Nations. Following its establishment, the League of Nations adopted its 1924 *Protocol For The Pacific Settlement of International Disputes* and encouraged States to resolve their disputes through such means as the Council of the League, judicial settlement (such as recourse to the Permanent Court of International Justice (PCIJ)), arbitration, or a committee of arbitrators.<sup>6</sup> The 1925 Locarno Treaties<sup>7</sup> also created the obligation for the parties to refer their disputes to one of the following bodies: (a) a permanent conciliation, (b) the PCIJ, (c) an arbitral tribunal, (d) or the Council of the League of Nations (Sette-Camara, 1991).

The United Nations (UN) Charter (1945), particularly, established a basic foundation for the peaceful settlement of disputes among States. According to Article 1 of the UN Charter, one of the main purposes of the UN is “[t]o maintain international peace and security” and also “to bring about by *peaceful means*, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to breach of the peace.” As the wording of this provision demonstrates, international disputes should be peacefully resolved on the basis of two fundamental principles: principle of justice and principle of international law.

Article 2(3) of the UN Charter also emphasises that “[a]ll Members [of the UN] shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”<sup>8</sup> This principle is resulted from the fact that “use of force”, as an initial means of dispute settlement, is considered unlawful in international law.<sup>9</sup> It should be pointed out that an international obligation to settle disputes peacefully is not only applied to UN members but to all States including non-members of the UN. There are a number of principles and rules in the UN Charter whose range of application goes beyond the UN members, either by becoming part of customary international law or acquiring the status of *jus cogens*.<sup>10</sup> The peaceful settlement of international disputes is considered a peremptory rule that has acquired the status of *jus cogens* in international law (Dixon, 1996).<sup>11</sup> Although States are not legally forced to settle their international disputes (except in cases where the maintenance of international peace and security is at risk<sup>12</sup>), they are obliged to settle these disputes peacefully, if they decide to resolve their disputes. At the present, there is no rule in international law to oblige a State to settle its dispute with another State, without its consent.<sup>13</sup> This is why the International Court of Justice has no jurisdiction over a State which has not agreed to be subject to the Court’s jurisdiction.

Although the UN Charter basically included the principle of the peaceful settlement of international disputes, the UN continued reiterating and reaffirming the principle in a number of documents.<sup>14</sup> Examples of these documents are the United Nations General Assembly (UNGA) Resolution on “*Consideration of Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (1962)*”<sup>15</sup>; the “*UNGA Declaration on the Strengthening of International Security (1970)*”<sup>16</sup>; the “*Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (1970)*”<sup>17</sup>; and the “*UNGA Declaration (Manila Declaration) on the Peaceful Settlement of International Disputes (1982)*”.<sup>18</sup> There were also multilateral agreements, mainly on regional bases, which included the principle of peaceful settlement of international disputes. Examples of these agreements are the Pact of the League of Arab States (1945); the Central American Mutual Assistance Agreement (1947); the North Atlantic Treaty (1949); the Warsaw Treaty (1955); the Declaration of the Bandung Conference of Asian and African States (1955); the Charter of the Organisation of African Unity (1963); the Cairo (1964) And Lusaka (1972) Conferences of Non-Aligned Countries; and the Final Act of the Conference on Security and Co-operation in Europe (1975) (Tarasov, 1991).

### 3. Different Means of Dispute Settlement in International Law

The 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes (CPSID) were the first international treaties that provided a list of choices for peaceful settlement of international disputes. These conventions introduced good offices and mediation, international commissions of inquiry, international arbitration (including the Permanent Court of Arbitration) as among peaceful methods of dispute settlement. The UN Charter (1945) then included a more comprehensive list of the peaceful means for dispute resolution. Article 33(1) of the UN Charter provides that “[t]he parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements<sup>19</sup>, or other peaceful means of their own choice.”<sup>20</sup> In general, there are two

principal mechanisms for peaceful settlement of international disputes: (a) judicial settlement which includes seeking dispute resolution by the International Court of Justice (ICJ) or arbitration (whether referring to the Permanent Court of Arbitration or any other arbitral court or tribunal); (b) non-judicial and diplomatic settlement which includes such methods of dispute resolution as negotiation, good offices, mediation, inquiry, conciliation, UN mechanism, and regional organisations.<sup>21</sup> As is stipulated in Article 33(1) of the UN Charter (including the validity of other peaceful means chosen by the parties to an international dispute), the methods of peaceful settlement of international disputes are not limited to those explicitly mentioned in the Charter.<sup>22</sup> Although pacific settlement of international disputes is an obligatory rule in international law, States are free to make their own choice from the peaceful means of dispute settlement.<sup>23</sup> Also, the parties to international disputes may arrange their own method for resolving these disputes. For example, the 1982 United Nations Convention on the Law of the Sea (UNCLOS)<sup>24</sup> includes a number of methods for dispute settlement from arbitration to special arbitration and to the law of the sea tribunal.<sup>25</sup> Article 287(1) provides that States parties are free to choose one or more of the following methods of dispute settlement concerning the interpretation and application of the UNCLOS<sup>26</sup>: (a) the International Tribunal for the Law of the Sea; (b) the International Court of Justice; (c) an arbitral tribunal; and (d) a special arbitral tribunal. These are, in fact, judicial methods of dispute settlement and should be used if the parties to the dispute were unable to reach a settlement through exchange of views or other diplomatic means or through a pacific means of their own choice.<sup>27</sup>

The role of the UN bodies should also be considered in peaceful settlement of disputes among States. According to Article 14 of the UN Charter, "the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations." In particular, the Security Council has certain responsibilities and powers regarding dispute settlement under Chapter VI of the UN Charter (Pacific Settlement of Disputes). Parties to a dispute are obliged to refer their dispute to the Security Council, if they have failed to resolve their dispute through the peaceful means mentioned in Article 33 of the UN Charter. (Article 37(1) of the UN Charter) The Security Council may recommend to the parties to a dispute to refer their dispute to the ICJ, if the continuation of the dispute may endanger the maintenance of international peace and security. (Articles 37 (2) and 36(3) of the UN Charter).<sup>28</sup>

#### **4. Arbitration as a Flexible Judicial Means of Dispute Settlement**

As was emphasised before, while arbitration is a judicial means for dispute settlement, States are interested in resorting to this kind of dispute settlement basically because of its flexibility. In fact, there are a number of advantages of arbitration over adjudication or litigation (such as submission of a dispute to the ICJ) that may encourage States to rely on arbitration for their dispute settlement and avoid seeking adjudication.<sup>29</sup> Among these advantages are: (a) flexibility - parties to a dispute can freely agree on all terms and principles governing the whole process of arbitration; (b) confidentiality - contrary to courts' judgements, arbitral awards are not published and only submitted to the parties to the dispute (unless these parties agree otherwise); (c) expeditious settlement - arbitration is often a more expeditious method of dispute

settlement than that of adjudication; and (d) cost effective - arbitration is usually less expensive than adjudication.

#### 4.1. History of Arbitration

According to some writers, the history of arbitration dates back to ancient civilisations, including Persia and Greece. Arbitration was also part of the practice of Amphyetyonis and was used in the resolution of disputes among the city States (Sette-Camara, 1991). Since then arbitration was used in developed societies and became part of a civilised legal system. In its modern form, arbitration became a commonly used method of dispute settlement since the end of the eighteenth century when the Jay Treaty (1794) was concluded between the United States of America (USA) and Great Britain (Brownlie, 1990).<sup>30</sup> The Jay Treaty provided arbitration as a method of resolving disputes between the two countries and established the basis for three member commissions. As a means of dispute settlement, arbitration became more popular in the nineteenth century and many governments relied on this means of conflict resolution to settle their disputes.<sup>31</sup> One of the main arbitration cases in the nineteenth century was the *Alabama Case* (1872).<sup>32</sup> The arbitration was conducted as a result of the 1871 Washington Treaty between the USA and Great Britain. Following the success of arbitration in the *Alabama Case*, many other arbitrations were undertaken including cases such as the *Behring Sea*, and the *British Guinea and the Venezuela Boundary Case* (Shaw, 1991). Since the end of the nineteenth century, many international and regional efforts were made to recognise arbitration as one of the main methods of dispute settlement. The 1899 and 1907 Hague Conventions (CPSID) were among the first international efforts to recognise the importance of arbitration as an efficient means of dispute settlement. These Conventions included a set of rules on international arbitration.<sup>33</sup> The Covenant of the League of Nations (1919) was the next international instrument to include arbitration as an important means of settlement of legal disputes between States. The 1924 *League of Nations Protocol For The Pacific Settlement of International Disputes* (Geneva, 2 October 1924) was the next step. According to Article 4(1& 2) of the Protocol, if the parties to a dispute were unable to resolve their dispute through the Council of the League of Nations, or through a judicial settlement or an arbitration, they had to establish a Committee of Arbitrators by agreement to settle the dispute. Although this Protocol did not enter into force, it was the basis for the adoption of the *General Act for the Pacific of International Disputes* (26 September 1928) by the Assembly of the League of Nations. The Act provided conciliation, arbitration, and judicial settlement (PCIJ) as main means of peaceful settlement of disputes. In its Article 33(1), the UN Charter also included arbitration among the peaceful means of dispute settlement.<sup>34</sup>

Arbitration was also among interests of States in different regions. In 1890, a treaty on arbitration was concluded in the first Pan-American Conference and its Article 1 considered arbitration as a principle of international law. The sixth Pan-American Conference took place in 1928 (Havana) that resulted in conclusion of a treaty on international arbitration and a protocol on the progressive development of arbitration in 1929. Although the treaty was a regional one, it contained principles on arbitration that contributed to the development of arbitration as a means of dispute settlement. After World War II, the Pan-American Conference was held in Bogota in 1948 that produced the Pact of Bogota as a treaty for peaceful settlement of disputes between Governments in America (Sette-Camara, 1991). In other regions, Governments also created their own dispute settlement treaties and systems. For example, Chapter III of the *European Convention for Peaceful Settlement of Disputes* (1957)<sup>35</sup> provided the mechanism of

arbitration as a means of dispute settlement of legal disputes and Article XIX of the *Charter of Organisation of the African Unity* was the basis for creation of the Commission on Mediation and Arbitration.

#### **4.2. The International Law Commission (ILC) and Arbitration**

Although with the establishment of the PCIJ and then the ICJ, the Permanent Court of Arbitration (PCA) played less important role in dispute settlement, there has still been sufficient interest in arbitration to develop its rules and procedure. In particular, the ILC included the topic of arbitral procedure among main topic under its consideration. After ten years of work on the topic, the ILC adopted its first draft Convention on Arbitral Procedure (32 articles) in 1953.<sup>36</sup> This draft did not gain sufficient support from the Governments as they were concerned that arbitration might become a process similar to adjudication. After taking the Governments' views into account and considering necessary changes, the ILC finally submitted a series of *Model Rules on Arbitral Procedure* to the UN General Assembly.<sup>37</sup> The General Assembly recognised these rules by adoption of Resolution 1262 (XIII) on 14 November 1958. The rules are optional and States are free to choose these rules or other procedural rules for application. There have also been continuing interest in the UN (particularly the United Nations Commission on International Trade Law (UNCITRAL)) in developing the rules on arbitration, particularly on international commercial arbitration.<sup>38</sup>

#### **4.3. Definition of Arbitration**

In its advisory opinion on the *Interpretation of the Treaty of Lusanne Case*, the Permanent Court of International Justice (PCIJ) presented its view on essential legal elements as the components of the notion of arbitration. The PCIJ stated that: (a) arbitration is a mechanism for the resolution of *legal disputes*; (b) the parties may control the composition of an arbitration court and may also create for its procedure; (c) international law is the law applicable to disputes between States; and (d) arbitration awards are legally binding on the parties to disputes.<sup>39</sup> The ILC also provided a similar definition for arbitration. According to the ILC, arbitration is "a procedure for the settlement of disputes between States by binding award on the basis of law and a result of an undertaking voluntarily accepted" (Dixon, 1996, p.253).<sup>40</sup> As this definition shows arbitration has the following characteristics: (a) it is a procedure for dispute settlement between States; (b) it is undertaken on voluntary basis; (c) its judgement is basically on the basis of law; and (d) its judgement (award) is binding upon the parties.<sup>41</sup>

#### **4.4. Definition of an International Dispute and Distinction between Legal and Political Disputes**

Although there is no established legal definition for "an international dispute", there are some sources which may provide some guidance in this regard. In its judgement in the *Mavrommatis Case*, the PCIJ defined the concept of "dispute" as "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons."<sup>42</sup> Also the PCIJ defined a dispute in its judgement of 16 December 1927 as "a difference of views which has not been capable of otherwise being overcome."<sup>43</sup> Another relevant issue is the lack of precise definition for legal disputes and their distinction from non-legal (political) differences between States. It is an important task to identify legal issues from political issues, particularly for the purpose of dispute settlement, since legal bodies (such as the ICJ and arbitral tribunals) have no jurisdiction to directly deal with political issues. However, it is not always easy to distinguish a legal dispute from a political one because of their close inter-relation in certain cases.<sup>44</sup> The importance of distinction between legal disputes and political disputes can be understood by referring

to the 1928 *General Act for the Pacific Settlement of International Disputes*<sup>45</sup> which attempted to clarify this distinction. Article 1 (on conciliation) and 21 (on arbitration) of the Act included that any dispute, which was not possible to settle by diplomacy, could be submitted to conciliation or arbitration. However, Article 17 of the Act (on judicial settlement) distinguished legal disputes from political conflicts by limiting its application to those disputes covered by Article 36(2) of the PCIJ Statute (*i.e.* legal disputes), as also included in Article 36(2) of the ICJ Statute.

Although Article 36(2) of the ICJ Statute does not directly define what legal disputes are, it implies that a dispute has a legal nature if it concerns: (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact, which if established, would constitute a breach of an international obligation; and (d) the nature or extent of the reparation to be made for the breach of an international obligation. Thus, any dispute related to these cases would be a legal dispute and, considering the general wording of provision, it can be interpreted to cover a wide range of disputes between States.<sup>46</sup>

#### 4.5. Arbitration Mechanisms

There are usually two mechanisms for conducting arbitration between States: (a) *ad hoc* arbitration; and (b) institutional (administered) arbitration. The use of the second mechanism is more often for international commercial arbitrations. *Ad hoc* arbitration is an arbitration which is conducted by parties to a dispute in accordance with their special agreement and without referring to a specialised arbitral institution.<sup>47</sup> Whereas an institutional arbitration is usually conducted with the involvement of an institution specially designed for conducting arbitration. The parties may select an existing arbitral institution to administer the whole process of arbitration. An *ad hoc* arbitral tribunal, in most cases, ceases to exist after an arbitral award is made or if the arbitration is terminated. However, specialised institutions specially established for arbitration continue to exist, even when they finalise an arbitration referred to them. The parties to a dispute are free to settle their dispute whether by conducting an *ad hoc* arbitration or an institutional arbitration. In most cases, the arbitration institutions are used for settlement of commercial disputes between States or their nationals. The main advantages of relying on an institutional arbitration are: (a) pre-existence of established rules which can be used for conducting the arbitration; and (b) availability of administrative services and facilities for conducting the arbitration. However, the disadvantages of this arbitration mechanism include: (a) application of charges for administrative services and facilities for arbitration; and (b) a slower process of conducting and concluding the arbitration (compared with an *ad hoc* arbitration), mainly due to the bureaucracy of the institution involved. *Ad hoc* arbitration is more efficient, if arbitrators have the expertise required for settling a particular dispute. It is usually faster and more cost-effective than submitting the dispute to an institutional arbitration. In general, there are a number of factors which may affect States' decision to settle their disputes through an *ad hoc* arbitration or through an institutional arbitration, factors such as the complexity of the dispute, the nature of dispute, the urgency of resolving the dispute, and the costs involved.

#### 4.6. The Permanent Court of Arbitration

The basis of the establishment of the Permanent Court of Arbitration (PCA) was the conclusion of the 1899 and 1907 Hague Conventions (CPSID). The 1899 Convention was the first basis for the formation of the PCA as a mechanism for optional arbitration of disputes between States. Then, the 1907 Convention revised and developed provisions of the 1899 Convention, including those concerning the PCA. Although the



1899 and 1907 Hague Conferences were successful in adoption of the 1899 and 1907 Conventions, these Conferences did not succeed to establish a system of compulsory arbitration of disputes among States by the creation of the PCA.

The Hague 1899 and 1907 Conventions deal with the PCA in details in Articles 20-29 and Articles 41-50 respectively.<sup>48</sup> The PCA is not really a court or a tribunal but a machinery to set up an arbitral tribunal. An arbitral court or tribunal created under the PCA system does not have a permanent basis or even fixed arbitrators. In fact, the PCA is composed of a panel of arbitrators nominated by Governments. States parties to the Conventions can nominate maximum four persons to be included in the list of arbitrators and as the members of the PCA.<sup>49</sup> When the parties to a dispute decide to form an arbitral tribunal, they may select the arbitrators from the members of the PCA. According to the 1899 and 1907 Hague Conventions, the PCA is competent to deal with all arbitration cases and it can also settle the "*compromis*" (arbitration agreement), if the parties to a dispute have asked the PCA to do so. The PCA has two main bodies: (a) the International Bureau which acts as secretariat or registry of the PCA for the purpose of establishing arbitral tribunals; and (b) the Permanent Administrative Council (composed of the diplomatic representative of States parties to the Conventions) which plays a supervisory role for the International Bureau. As the first international body with dispute settlement in early twentieth century, particularly before World War I, the PCA played an important role in providing an arbitration mechanism for peaceful settlement of disputes between States.<sup>50</sup> Although, its role was affected by the establishment of the PCIJ, and then the ICJ, the new trends of States show that the PCA may again form a significant part of the international dispute settlement (Brownlie, 1990).

#### **4.7. Rules and Principles Governing Arbitration between States**

There are certain principles and rules which apply to arbitration between States and its procedure. These principles and rules are discussed under the following headings.

**4.7.1. States as Parties in an Arbitration:** It is usually the case that States are the main parties in international arbitration. However, States may decide to represent their nationals in international arbitration. It basically depends on the nature of a dispute and whether individual interests (such as commercial contracts) are involved. For example, if the dispute is about boundary delimitations between neighbouring States, only these States can be parties in arbitration for the purpose of settling the dispute. On the other hand, if there are disputes between States as a result of commercial activities of their nationals in the territory of other States, States whose nationals are involved in these activities may choose to represent their nationals in an arbitration process. Also States may agree to settle their commercial disputes with foreign corporations through arbitration by concluding an agreement with these corporations. Example of arbitration cases where States have represented the interests of their nationals are the arbitration cases between Iran and the USA that have been continuing since the Declaration of the Government of Algeria of 19 January 1981. Under Article 2(1) of the Declaration, the Iran-United States Claims Tribunal<sup>51</sup> was established "for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and counterclaim..."<sup>52</sup>

**4.7.2 The Consent of States:** States should indicate their consent to undertake an arbitration. States parties to a dispute may indicate their consent to submit their dispute to an arbitration court mainly through two ways. They may do so by including an arbitration clause (the compromissory clause) in a treaty, that is to say before a dispute arises, or by concluding a special agreement (arbitration agreement) for dispute settlement after a dispute has arisen. The special agreement (arbitration agreement) is

technically known as "*compromis*", a term which was first used in the 1899 and 1907 Hague Conventions. States may also indicate their consent to submit their disputes to arbitration without concluding an agreement. For example, it is possible that a State may demonstrate its implied consent to arbitration by submitting a letter to the other party seeking the formation of an arbitration court or an arbitral tribunal to deal with the dispute.

**4.7.3. The *Compromis*:** States may conclude their own *compromis* and set up all rules which should apply to arbitration between them or they may simply refer their dispute to an arbitration institution to develop a *compromis* and also to conduct the arbitration based on this document. In either case, the *compromis* is the basic document that includes all essential elements for the conduct of arbitration. The more comprehensive the *compromis* is, the more efficient the arbitration will be. If some matters are not addressed by the parties to a dispute in their arbitration agreement, some disagreements may arise. The practice of States and also the international instruments on arbitration provide the main principles which should be included in an arbitration agreement, if arbitration should be conducted effectively.

The *compromis* should basically include provisions on the following matters: object of the arbitration; the issues which should be resolved (issues subject to arbitration); applicable law (substantive law); procedural rules which should govern the conduct of arbitration; composition of the arbitral tribunal; selection process of arbitrator(s); the binding force of the arbitral tribunal's award; the enforcement of the award; the language in which the arbitration will be conducted (official language of the arbitral tribunal); the place of arbitration (location); and allocation of costs.

**4.7.4. The Competence of an Arbitral Tribunal:** The basis of the competence of an arbitral tribunal and its powers is the *compromis*. The extent of this competence may vary from one arbitration case to another depending on the extent of powers given to the tribunal in different arbitration agreements. It is generally the case that arbitral tribunals have jurisdiction to deal with the issues at stake, the issues which were brought before them for settlement. The tribunal is also competent to select its own rules of procedure, unless the parties to the dispute have specified a particular set of arbitral procedure in the *compromis*. The tribunal has power to interpret the *compromis* and to correct or revise its decision in accordance with the request of the parties. There is no barrier for the parties to confer a broad range of competence on an arbitral tribunal. The tribunal is competent to act in the framework of the *compromis* and its competence may only be challenged, if it has not acted in accordance with the *compromis*.

**4.7.5. The Law Applicable to Arbitration:** The parties to a dispute should specify the substantive law that should be used in arbitration to settle the dispute. The determination of this law usually depends on the nature of dispute. In some cases, such as certain commercial disputes, States may specify law of a particular country to be applied in settling a dispute between States. However, if the dispute arises out of application of international law and its principles, it is usually the case that the decision of the arbitral tribunal will be based on international law. In this case, the arbitrators will apply all evidence of international law related to the case, including customary rules and the general principles of international law. In fact, there are certain disputes for which national laws may not be of assistance in settling the dispute and only international law offers a solution. Like the ICJ, an arbitral tribunal may also issue its judgement *ex aequo et bono*, if the parties to a dispute have asked the tribunal to settle the dispute on this basis.<sup>91</sup> In fact, these parties should include this principle in their *compromis*, if they

wish to empower the tribunal to give its judgement (award) on the basis of equity and justice.<sup>53</sup>

**4.7.6. The Procedural Rules of Arbitration:** The 1899 and 1907 Hague Conventions are the first international instruments that have included provisions on the arbitral procedure.<sup>54</sup> These provisions were developed by the adoption of new series of rules governing arbitration. The documents such as those adopted by the UNGA in 1958 (the ILC *Model Rules on Arbitral Procedure*), the 1976 *UNCITRAL Arbitration Rules* and the 1985 *UNCITRAL Model Law on International Commercial Arbitration* are examples of international documents with more developed rules on arbitration. States are free to create their own rules of procedure, in accordance with their needs and desire, to be included in the *compromis*. However, States may also select established rules to govern the arbitration (such as those established by arbitration institutions). States may also empower an arbitral tribunal to determine its own rules of procedure. If the *compromis* does not include any provision on arbitral procedure, the procedural law of the place of arbitration will be applied. Procedural rules are a series of rules on how an arbitration should be conducted. There are a wide range of procedural rules which are applied for the conduct of an arbitration. These rules include provisions on the arbitration procedure (pleadings and oral discussions), provisions on the use of experts and how to convene witnesses, provisions on the time allowed to arbitrators to make awards, provisions on interim measures of protection, provisions on the decision-making in absence of a party, and provisions on confidentiality of the discussions and arbitral awards (unless the parties agree otherwise).<sup>55</sup>

**4.7.7. The Composition of an Arbitral Tribunal:** Although there are some established practices for the composition of arbitration courts, there is no strict rule to prevent States from creating an arbitral tribunal or an arbitration court as they wish. The parties to a dispute will in most cases appoint an arbitrator (sole-arbitrator)<sup>56</sup> or a panel of arbitrators (mainly three or five arbitrators).<sup>57</sup> In some cases, the parties may confer an appointing authority upon an impartial third party. This may be the case when the parties refer their dispute to an arbitration institution empowered by the parties to appoint the arbitrator(s).<sup>58</sup>

In addition, there are a number of treaties where arbitration is considered as a means of peaceful settlement. These treaties may leave the choice of arbitrators to the parties to a dispute and if they may not reach agreement on the composition of an arbitration court, the final decision is made by an appointing authority authorised under these treaties.<sup>59</sup> In case of an arbitral tribunal with three members, one arbitrator is appointed by either party to the dispute and also an umpire who is appointed by both parties to the dispute.<sup>60</sup> In this case, the role of the umpire is important particularly when the arbitrators are unable to agree on final decision. In fact, if the parties disagree and are unable to reach the same conclusion, the umpire's decision will be considered as the final award of the arbitration court. States may also appoint three arbitrators to form an arbitration court where the final decision will be made by majority of them. It should be pointed out that jurisdiction of the arbitrators originates from the arbitration agreement. Accordingly, the arbitrators are competent to issue an award on the basis of the authority and power given to them by means of the arbitration agreement. It should be added that any person can be appointed as an arbitrator. Selection of such a person is not limited by such factors as sufficient legal qualifications or experience. Although it is mostly the case that an arbitrator is appointed on the basis of his/her legal expertise and skills, any person can be selected to play the role of an arbitrator, if the parties to a dispute have agreed on such a choice. It should also be pointed out that "the arbitral tribunal is

usually created to deal with a particular dispute or class of disputes" (Brownlie, 1990, p.710). This means that the tribunal usually ceases to exist after it has issued its judgement (award), unless there would be a need for correction or revision of the award or for its interpretation by the tribunal.

**4.7.8. The Award and Its Characteristics:** An arbitral tribunal is formed mainly for the purpose of making an award to settle a dispute between States involved. An arbitral award should contain certain elements to be a valid judgement. These elements are: (a) it should be in writing; (b) it should include the reasons for the decision made; (c) it should be based on law and legal principles; and (d) it should legally be enforceable.<sup>61</sup> The award has also certain characteristics. It is final and legally binding upon the parties to the dispute.<sup>102</sup> Like the judgement of the ICJ, the award is only binding on the parties. In the case of arbitral tribunals consisting of a panel of arbitrators, if arbitrators cannot reach a consensus, the award should be made by the majority of arbitrators and those in minority may attach their dissenting opinion to the award. Also, the award is not usually subject to appeal, unless the parties agree otherwise.<sup>62</sup> However, an award can be corrected or revised if there is any error in the award or an important fact affecting the decision has been discovered in certain period of time after the award.<sup>63</sup> The validity of an arbitral award can also be challenged on a number of bases. According to Article 35 of the 1958 UN Model on Arbitral Procedure these bases include: (a) an abuse of power by the tribunal; (b) corruption of an arbitrator; (c) no legal basis for the award or a fundamental departure from the rules of procedure; and (d) the nullity of the *compromis* or arbitration. It should be also pointed out that the tribunal is legally responsible to make its final decision to settle a dispute or disputes brought before it. The tribunal cannot refuse to give its decision on the basis that there is a vacuum in law (*non liquet*) and there is no principle of law to be applied to the dispute(s). In addition, the awards are made to be enforced and in most cases the parties (States) to a dispute will give effect to the award made to settle the dispute.<sup>64</sup>

## 5. Conclusion

Arbitral tribunals have played a significant role in the development of rules and principles of international law, particularly before the establishment of the world courts (the PCIJ and the ICJ). The awards of these tribunals have also contributed significantly to the development of many aspects of international law from the law of State responsibility to the law of the sea.<sup>65</sup> It appears that this role will continue in future. Although the role of the PCA was influenced by the establishment of the PCIJ and the ICJ, there have been many other *ad hoc* arbitration cases between States mainly due to the flexibility of arbitration.<sup>66</sup> In addition, there have been new trends in State practice to revive the role of the PCA and PCA arbitration system may be used more significantly. This is particularly true because arbitration is one of the most effective peaceful means of dispute settlement in international law.

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### Notes

1. It should be pointed out that as a result of developments in international law, subjects of international law are not confined to States and these subjects now include international organisations and in some cases individuals. Accordingly, international organisations, multi-national corporations, and individuals may also be parties to a dispute and subject to a dispute settlement mechanism (such as arbitration). In this connection, Tarassov states that “[w]here so provided by treaty, parties to a dispute may be not only States but also international organisations and other subjects of international law.” Tarassov, Nikolai Konstantinovitch, “Introduction to Peaceful Settlement of Disputes”, in Mohammed Bedjaoui (ed.) (1991), International Law: Achievements and Prospects, Paris: United Nations Educational, Scientific, and Cultural Organisation (UNESCO), pp.501-509, at 504.
2. For example, see the *Palmas Island Case*, United Nations Reports of International Arbitral Awards (UNRIAA), Vol.2, 1928; the *North Atlantic Coast Fisheries Case* (United States of America/Great Britain), UNRIAA, Vol.11, 1910; the *Anglo-French Continental Shelf Case* [English Channel Continental Shelf] (1977-1978), 18 UNRIAA; the *Guinea/Guinea Bissau Maritime Delimitation Case* (1983), 77 International Law Reports (ILR) 636; and the *Canada/France Maritime Delimitation Case* (1992), 31 International Legal Materials (ILM) 1145.
3. There have been a number of treaties in the early twentieth century that required States to avoid use of force or resorting to war for dispute settlement. For example, Article 1 of the 1899 and 1907 Hague Conventions states that “[w]ith a view to obviating, as far as possible, recourse to force in the relations between States, the Contracting Powers agree to use their best efforts to insure the pacific settlement of international differences.” Also Article 2 of the Paris Treaty of 27 August 1927 (the Kellogg-Briand Pact) provides that “[t]he High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or whatever origin they may be, which may arise among them, shall never be sought except by peaceful means.” League of Nations Treaty Series, Vol. XCIV, 1929, P.63.
4. The 1899 Hague Conference was convened following the suggestion of Tsar Nicolas II of Russia to hold an international peace conference. Also, the 1907 Hague Conference was convened following the suggestion of the USA Secretary of State John Hay. Sette-Camara, Jose, “Methods of Obligatory Settlement of Disputes”, in Mohammed Bedjaoui (ed.) (1991), International Law: Achievements and Prospects, Paris: UNESCO, pp.519 *et seq.*, at 521.
5. As the preamble of the 1907 Hague Convention states, it was deemed necessary to revise and complete the work of the First Hague Conference for the Pacific Settlement of International Disputes and to conclude a new Convention for this purpose. The 1907 Hague Convention was signed on 18 October 1907 and entered into force on 26 January 1910. It included 97 Articles.
6. The Protocol did not enter into force but its provisions were used for the codification of the *General Act for the Pacific Settlement of International Disputes* adopted by the Assembly of the League of Nations on 26 September 1928. The Act included conciliation and judicial settlement (PCIJ) as peaceful means of dispute settlement.
7. The 1925 Locarno Treaties (1 December 1925) formed the basis for the conclusion of four arbitration conventions between Germany on one side and Belgium, France, Czechoslovakia, and Poland on the other side.
8. Although importance is given to the settlement of those disputes which may endanger “international peace and security, and justice”, the application of the principle of pacific

resolution of international disputes is not limited to those disputes. The range of application of the principle is extensive enough to cover almost all disputes among States.

9. As Article 2(4) of the UN Charter underlines, the UN members should refrain from the threat or use of force in any manner inconsistent with the purposes of the UN.

10. There are certain pivotal rules of international law that are imposed on all States as peremptory rules, *i.e. jus cogens*. Compliance with these rules is obligatory for such essential purposes as the maintenance of peace, security, and the order of the world, and also for the protection of human rights. Article 53 of the 1969 *Vienna Convention on the Law of Treaties* defines *ius cogens* as follows: "a peremptory norm of general international law (*ius cogens*) is a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted." *Vienna Convention on the Law of Treaties* (1969), UN Doc A/CONF.39/27, 1155 UNTS 331. The ILC provided some examples governed by the rule of *ius cogens*. These are an unlawful use of force, genocide, slave trading, and piracy. See *Yearbook of the International Law Commission* (YILC), 1966, Vol. II, p.248. Among other examples of *ius cogens* are the peaceful settlement of international disputes, the sovereign equality of States, and the right of self-determination.

11. Poeggel and Oeser write that "[o]nly after the First World War and the development of the prohibition of force in international relations did the principle of peaceful settlement of disputes gradually gain obligatory character for all States." Poeggel, Walter, and Edith Oeser, "Methods of Dispute Settlement", in Mohammed Bedjaoui (ed.) (1991), *International Law: Achievements and Prospects*, Paris: UNESCO, pp.511-517 (ch.24), at 511.

12. See Article 33 of the UN Charter.

13. As early as 1923, the PCIJ stated in its advisory opinion that "[i]t is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States either to mediation or arbitration, or to any other kind of pacific settlement. The *Eastern Carelia Case*, PCIJ Reports, Series B, Advisory Opinion, No.5, p.27.(2 ILR 394) Also see the *Ambatielos Case*, International Court of Justice Reports (ICJ Reports), 1953, p.19. (20 ILR 547).

14. As regards the importance of continuous support for the principle of peaceful settlement of disputes, the UNGA Resolution 37/10 states that "the question of the peaceful settlement of disputes should represent one of the central concerns for States and for the United Nations" and that "the efforts to strengthen the process of the peaceful settlement of disputes should be continued."

15. UNGA Resolution 1815. See also UNGA Resolution 268 (III), 28 April 1949, on *Study of the Methods for the Promotion of International Co-operation in the Political Field*.

16. UNGA Resolution 2734 (XVII).

17. UNGA Resolution 2625 (XXV), Annex, 24 October 1970. The Resolution includes seven basic principles (of international law) and duties of States one of which is the obligation to settle international disputes through pacific means.

18. UNGA Resolution A/37/10, Annex, 15 November 1982.

19. Examples of regional or specialised agencies which play a role in dispute settlement among States are the World Trade Organisation, the European Court of Human Rights, the Central American Court of Justice, and the Inter-American Court of Human Rights.

20. The provision of Article 33(1) of the UN Charter is reiterated in a number of international documents adopted after the Charter. These documents include the UNGA Resolution 2625 (XXV) of 1970 and the Manila Declaration of 1982.

21. To distinguish between judicial and non-judicial settlement of international disputes, Dixon views that a judicial settlement means "the settlement of a dispute according to international law, usually by an impartial third party, the outcome of which is legally binding on the disputants." Dixon, Martin (1996), *Textbook on International Law*, Third Edition, London: Blackstone Press Limited, p.249. In fact, the main characteristic of a judicial settlement is its binding force over the parties to a dispute. The methods of dispute settlement can also be divided on the basis of participation or non-participation of third parties in the dispute settlement. See, for example, Tarassov, *op.cit.* p. 506 and Poeggel and Oeser, *op. cit.*, p. 512.

22. Also the UNGA Resolution 2625 (XXV) of 1970 (*Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*), *inter alia*, provides that "[I]nternational disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means." This is also re-stated in the 1982 Manila Declaration (Section I (3)).

23. As Ranjeva states, "[t]he freedom of choice of the means of settlement is, in the last analysis, simply a corollary of the peaceful nature of the means used. In the Law of the Sea Convention, no compulsion is placed on a party to accept any particular diplomatic or legal procedure for settling a dispute in preference to any other." Ranjeva, Raymond, "Settlement of Disputes", in Rene-Jean Dupuy and Daniel Vignes (eds.) (1991), *A Handbook on the New Law of the Sea*, Vol. 2, Ch. 25, Dordrecht: Martinus Nijhoff Publishers, p. 1342.

24. Official Text of the United Nations Convention on the Law of the Sea (Signed on 10 December 1982 and entered into force on 16 November 1994), The Law of the Sea Publication Series, United Nations Publication, Sales No. E. 83.V.5, New York, 1983. Doc. A/ CONF. 62/122, 7 October 1982. Reprinted in 21 *ILM* 1261 (1982). The UNCLOS entered into force on 16 November 1994.

25. The range of disputes between States in the field of the law of the sea may include disputes related to: (a) navigational rights and responsibilities, (b) rights and responsibilities in the exclusive economic zone (EEZ), (c) delimitation of maritime areas, (d) the conduct of scientific research in the EEZ, and (e) exploitation and exploration of the common heritage area (the deep sea bed beyond the continental shelves of States).

26. See Article 298 of the UNCLOS for optional exceptions which States parties may make to the application of dispute settlement provisions to certain disputes. These disputes may include those related to maritime boundary delimitations, military activities, and those under the examination of the UN Security Council. In general, as Ranjeva writes: "the general structure of Part XV machinery shows a gradual tendency towards institutionalising judicial obligation. The process of dispute settlement under Part XV involves two successive stages: [a] an initial phase of optional settlements by diplomatic negotiations and conciliation; [b] a second phase of compulsory procedures entailing decisions if the first stage is not successful." Ranjeva, *op. cit.*, p.1344.

27. See Section 1 of Part XV of the UNCLOS (Settlement of Disputes) and its Article 286. Also see Annex V of the UNCLOS concerning conciliation as a means of the law of the sea dispute settlement. In general, there are a number of international treaties which encourage parties to resolve their differences first by exchange of views and

negotiation, and if this method fails, the parties may seek arbitration for their dispute settlement. An example of these treaties is the 1973 *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES). (12 ILM 1085 (1973)) Article XVII (Section 1) of the CITES provides that any dispute related to the interpretation or application of the Convention should be resolved by negotiation between the Parties involved in the dispute. Then, Section 2 of the article provides that if the these Parties are unable to settle their differences by negotiation, "the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague and the Parties submitting the dispute shall be bound by the arbitral decision." Arbitration (or adjudication by the ICJ), as a principal means of dispute settlement, is included in many conventions concluded under the auspices of the International Maritime Organisation (IML). See, for example, Article 13 of the International Convention for the Prevention of Pollution of the Sea by Oil (London, 12 May 1954), 327 United Nations Treaty Series (UNTS) 3, and Article 8 and Annex and Articles 13-19 of the International Convention on the High Seas in Cases of Oil Pollution Casualties (Brussels, 29 November 1969), 26 United States Treaty series (UST) 765.

28. For a study of methods of dispute settlement in international law, including dispute settlement mechanisms under the UNCLOS see Merrills, J. G. (1984), International Dispute Settlement, London: Sweet & Maxwell.

29. Also as regards the distinction between international arbitration and international adjudication, Buergenthal and Maier view that although "arbitration is a form of adjudication", the difference is that "an arbitral tribunal or panel is as a rule not a permanent judicial body." The composition of an arbitral tribunal or panel, its jurisdiction and its rules of procedure are agreed in an agreement (*compromis*) by the parties to the dispute. However, adjudication "takes place in the context of a permanent court, which has a fixed composition and operates under preexisting jurisdictional standards and rules of procedure." Buergenthal, Thomas, and Harold G Maier, "Public International Law (1990)" quoted in Knight, Gary, and Hungdah Chiu (eds.) (1991), The International Law of the Sea: Cases, Documents, and Readings, London: Elsevier Applied Science, p.782.

30. The Jay Treaty was concluded after the independence war in the United States of America and aimed to determine the boundary lines in the Saint Croix River.

31. Akehurst writes that "[i]n the nineteenth century there was a tendency for arbitrators appointed by the parties to regard themselves as representatives of the state which had appointed them, rather than as impartial dispensers of justice." Akehurst, Michael (1992), A Modern Introduction to International Law, Sixth Edition, London; Routledge, p. 244.

32. See Moore, J. B., International Arbitrations, (A History and Digest of the International Arbitrations to which the United States has been a Party), 6 Volumes, U.S. Government Printing Office, 1898, Vol.I, p.495.

33. See Title IV (On International Arbitration), Articles 15- 57 of the 1899 Hague Convention and Part IV (International Arbitration), Articles 37-90 of the 1907 Hague Convention. The 1907 Hague Convention is a revised and more developed version of the 1899 Hague Convention. It was after the codification of the Hague Conventions that the USA signed a series of arbitration treaties in 1913 and 1914 (the Bryan Treaties). Brownlie, Ian (1990), Principles of Public International Law, Fourth Edition, Oxford: Clarendon Press, p. 709.



34. Also see Article III of the *Optional Protocol of Signature concerning the compulsory Settlement of Disputes* (which may arise regarding the four Geneva Conventions on the Law of the Sea), adopted on 29 April 1958, entry into force 30 September 1962. U.N. Doc. A/ Conf.13/L.57. Final Act of the First UN Conference on the Law of the Sea (UNCLOS I), UN.Doc. A/CONF.13/38, p.146. Reproduced in 450 UNTS 169 (1963). This Protocol was adopted as part of the UNCOLS I (Geneva, 1958) for provision of peaceful means of settling disputes which may arise out of the interpretation or application of any four conventions adopted in the UNCOLS I.
35. 320 UNTS 244.
36. See YILC. Vol.II, 1953, pp.201 and 208. See also A/CN.4/92, *Commentary on the Draft Convention on Arbitral Procedure* (1955). See also the Report of the Commission on the Work of its Fifth Session (1953), UN Yearbook, 1953, p.670.
37. See YILC, Vol.II, 1953, p.81. See also the Report of the Commission on the Work of its Tenth Session (1958), UN Yearbook, 1958, p. 383.
38. See, for example, the 1976 UNCITRAL Arbitration Rules and the 1985 UNCITRAL Model Law on International Commercial Arbitration.
39. See the *Interpretation of the Treaty of Lusanne Case (1925)*, PCIJ Reports, Series B, No.12. There are similar definitions of arbitration in many multilateral and bilateral treaties. For example, according to Article 15 of the 1899 Hague Convention (CPSID) (Article 37 of the 1907 Hague convention (CPSID)), arbitration is "the settlement of differences between States by judges of their own choice, and on the basis of respect for law."
40. According to the Dictionary of Arbitration Law and Practice, arbitration is "a term used to describe a process to settle disputes between two or more parties by referring to one or more persons specially appointed for that purpose, and who are known as arbitrators." Lee, Eric (1986), Dictionary of Arbitration Law and Practice, London: Mansfield Law Publishers, p.31.
41. Also Sette-Camara writes that the characteristics of arbitration are: "(a) the parties define freely the object of the arbitration; (b) the arbitrators are chosen by the parties, either directly or by methods agreed between them; (c) the arbitral decision, like a judicial decision, is binding, unlike other means of pacific settlement which offer merely recommendations". Sette-Camara, *op. cit.*, p. 529.
42. PCIJ Reports, 1924, Series A, No.2, p.II.
43. Judgement of 16 December 1927, Interpretation of Judgements Nos. 7 and 8 (Factory at Chorzow), PCIJ Reports, Series A, No.13, pp. 10 -11.
44. As Tarassov writes: 'any "political" dispute or situation involves questions of international law (e.g. the principles of sovereignty, non intervention and territorial integrity) and should be settled on that basis, while behind "legal" disputes there are always differences of political interest. Thus, a subdivision does not and cannot have clear-cut boundaries.' Tarassov, *op.cit.*,p.504.
45. The Act was signed in Geneva on 26 September 1928.
46. Arbitration and adjudication are pacific means for settlement of legal disputes only. See Sette-Camara, *op.cit.*, at 525. Although legal disputes may have some political implications or *vice versa*, the dispute should be primarily of legal nature as embodied in Article 36(2) of the ICJ Statute, if it should be subject to arbitration or adjudication.
47. For example, *ad hoc* arbitrations were undertaken in the following cases: the *Palmas Island Case* (1977), the *North Atlantic Coast Fisheries Case* (1910), the *Anglo-French Continental Shelf Case* (1977-1978), the *Guinea/Guinea Bissau Maritime Delimitation Case* (1983), and the *Canada/France Maritime Delimitation Case* (1992).

48. Title IV, Chapter II (On the Permanent Court of Arbitration), Article 20-29 of the 1899 Hague Convention; and Part IV, Chapter II (The Permanent Court of Arbitration), Articles 41-50 of the 1907 Hague Convention. The provisions on the PCA were updated in 1907 Conference and new provisions were added into the 1907 Hague Convention with respect to the PCA.

49. According to Article 44 of the 1907 Hague Convention, the persons nominated by Governments to be included in the PCA list of arbitrators should be “of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrator.”

50. Akehurst writes that “[t]he Permanent Court of Arbitration decided twenty cases between 1900 and 1932; since then it has been overshadowed by the Permanent Court of International Justice and the International Court of Justice, and has heard very few cases.” Akehurst, *op. cit.*, pp.244. Among the arbitration cases conducted by the PCA are: the 1902 *Pious Fund Case* (USA/Mexico), the 1910 *North Atlantic Coast Fisheries Case*, and the 1911 *Savarkar Case* (Great Britain/France). Castel, J.G. (1976), International Law Chiefly as Interpreted and Applied in Canada, Toronto: Butterworths, p.1239. The last case dealt with by the PCA was the *Nordstjernan Company Case* between the United States and Sweden (18 July 1932).”

51. See 1 Iran-US Claims Tribunal Reports (CTR), pp.3-56; 20 ILM (1918) 223. The tribunal, with some amendments, adopted the UNCITRAL arbitration rules as its procedural rules. These rules were adopted by the UNGA Resolution 31/98 of 17 December 1976 and are primarily used for international commercial arbitrations.

52. “The Tribunal also has jurisdiction to hear certain claims between the US and Iran arising out of contractual arrangements for the purchase and sale of goods and services, and disputes relating to the interpretation and implementation of the Claims Settlement Agreement itself.” Shaw, Malcolm N. (1991), International Law, Third Edition, Cambridge: Grotious Publications Limited, p.654. Since its establishment the Tribunal has dealt with such issues as the legal status of dual nationality and the legality of expropriation.

53. See Article 33(2) of the 1976 UNCITRAL Arbitration Rules and Article 28(3) of the 1985 UNCITRAL Model Law on International Commercial Arbitration.

54. See the 1899 Hague Convention, Title IV, Chapter II (On Arbitral Procedure), Articles 30-57 and the 1907 Hague Convention, Part IV, Chapter III (Arbitration Procedure), Articles 51-85.

55. For detailed model rules on arbitral procedure see, for example, the 1976 UNCITRAL Arbitration Rules and the 1985 UNCITRAL Model Law on International Commercial Arbitration.

56. A sole arbitrator can be a head of State (who may refer the case to an expert) like in the *Clipperton Island Arbitration* (France v. Mexico) (1932) 26 American Journal of International Law 390, or a judge of a third State like in the *Tinoco Arbitration* (1923) 1 UNRIAA 369. In the *Guinea/Guinea-Bissau Maritime Delimitation Case* (1983) the arbitrators were judges of the ICJ. 77 ILR 636.

57. See Article 24 of the 1899 Hague Convention and Article 45 of the 1907 Hague Convention. Article 5 of the 1976 UNCITRAL Arbitration Rules provides that if the parties have not agreed on the number of arbitrators, the arbitral panel will be composed of three arbitrators. Article 10 of the 1985 UNCITRAL Model Law on International Commercial Arbitration includes similar provision.

58. See also Article 6 of the 1976 UNCITRAL Arbitration Rules and Articles 6 and 11 of the 1985 UNCITRAL Model Law on International Commercial Arbitration.
59. For example, see Article 3, paras. (d) and (e), Annex VII (Arbitration), the UNCOLS that empower the President of the International Tribunal for the Sea to make necessary appointments if the parties to a dispute fail to agree on the choice of arbitrators.
60. If the parties are unable to agree on the third member, an appointing authority, as specified in the arbitration agreement (such as the President of the ICJ), the *compromis*, will appoint the third member of the arbitral tribunal.
61. Article 52 of the 1899 Hague Convention and Article 70 of the 1907 Hague Convention. See also Article 32 of the 1976 UNCITRAL Arbitration Rules and Article 31 of the 1985 UNCITRAL Model Law on International Commercial Arbitration.
62. As Buergenthal and Maier point out: "Some arbitral clauses permit judicial review of the decree by the International Court of Justice." Buergenthal and Maier, *op. cit.*, p.783. See, e.g., Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan), *ICJ Reports*, 1972, p.46. See also the *Senegal/Guinea-Bissau Arbitral Case* (1992) 31 *ILM* 32.
63. See Article 36 of the 1976 UNCITRAL Arbitration Rules and Article 33 of the 1985 UNCITRAL Model Law on International Commercial Arbitration and Article 55 of the 1899 Hague Convention and Article 83 of the 1907 Hague Convention. See also Article 61 of the ICJ Statute.
64. Some international conventions have been concluded concerning the enforcement of arbitral awards. These conventions include (a) the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* ("New York Convention"), 10 June 1958, (entered into force in the United States in 1970), 7 *ILM* 1046; (b) the *Inter-American Convention on International Commercial Arbitration* ("Panama Convention"), 30 January 1975 (entered into force in the United States in 1990), 14 *ILM* 336; and (c) the *International Convention on the Settlement of International Disputes Between States and Nationals of Other States* (ICSID Convention), 18 March 1965 (entered into force in the United States on October 14, 1966), 4 *ILM* 532. Rules on enforcement of arbitral awards may also be included in bilateral treaties of Friendship, Commerce and Navigation.
65. Examples are the 1926 case of the *US-Mexican Claims Commission* (in the area of State responsibility) and the 1928 case of the *Palmas Island* (in the area of acquisition of territory). Also see the 1987 *Amoco Finance Case* decided by the US-Iran Claims Tribunal on law relating to expropriation of foreign owned property.
66. As Shaw points out: "In recent years, there has been a rise in the number of interstate arbitrations. The *Rann of Kutch* case (50 *ILR* 2), the *Anglo-French Continental Shelf* case (54 *ILR* 6), the *Beagle Channel* case (52 *ILM* 93) and the *Taba* case (80 *ILM* 244) were subject of arbitral awards, usually successfully." Shaw, *op. cit.*, p. 653.

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