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THE PERMANENT COURT OF ARBITRATION (PCA)

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ABSTRACT

The Permanent Court of Arbitration - PCA is an intergovernmental organization established in 1899 to facilitate arbitration and other forms of dispute resolution between states. It was the first global institution created for the adjudication of international disputes and has developed into a modern, multifaceted arbitral institution prepared to meet the rapidly evolving dispute resolution needs of the international community. Today the PCA provides services for the resolution of disputes involving various combinations of states, state entities, intergovernmental organizations, and private parties. Its caseloads encompasses territorial, treaty, and human rights disputes between states, as well as commercial and investment disputes, including many disputes arising under bilateral and multilateral investment treaties.

Key words: Mediation, Reconciliation, Arbitration, Advisory.

INTRODUCTION

The Permanent Court of Arbitration was established by the first International Peace Conference held at The Hague, the Netherlands, in 1899. It is an intergovernmental organisation that offers the worldwide community a variety of conflict resolution services. Parties may choose from between two options which are either non-binding methods such as mediation and conciliation, or Arbitration. If they choose arbitration for conflict resolution, the judgement of the arbitral tribunal is binding on them under the Permanent Court of Arbitration. The functions performed by the Permanent Court of Arbitration includes Arbitration, Mediation, Fact-finding or commissions of inquiry, appointing authorities and hearing facilities as well as guest tribunals. The international intergovernmental institute has been established in order to resolve disputes between states. The Permanent Court of Arbitration also has a three-part organisational structure that includes the Administrative Council, which oversees its policies and finances, Members of the Court, a panel of independent prospective arbitrators, and the International Bureau, which is led by the Secretary-General.

HISTORICAL BACKGROUND

The Permanent Court of Arbitration - PCA is an intergovernmental organization established in 1899 to facilitate arbitration and other forms of dispute resolution between states. It was the first global institution created for the adjudication of international disputes and has developed into a modern, multifaceted arbitral institution prepared to meet the rapidly evolving dispute resolution needs of the international community. Today the PCA provides services for the resolution of disputes involving various combinations of states, state entities, intergovernmental organizations, and private parties. Its caseloads encompasses territorial, treaty, and human rights disputes between states, as well as commercial and investment disputes, including many disputes arising under bilateral and multilateral investment treaties.

The PCA was established by the Convention for the Pacific Settlement of International Disputes, concluded at *The Hague in 1899*¹ during the first Hague Peace Conference. The Conference was convened at the initiative of *Czar Nicolas II of Russia "with the object of seeking the most objective means of ensuring to all peoples the benefits of a real and lasting peace, and above all, of limiting the progressive development of existing armaments."* The 1899 Hague Convention was later revised at the second Hague Peace Conference in 1907 and, as of December 2011, 115 States have ratified one or both of the Hague Conventions. Matters of policy are decided by an Administrative Council, composed of the diplomatic representatives accredited to the Netherlands of the State Parties to the Hague Conventions.

The seat of the PCA is *The Peace Palace in The Hague*, the Netherlands, which was constructed in 1913 to serve as the PCA Headquarters. The Peace Palace also provides accommodation to the International Court of Justice, the Hague Academy of International Law and the Peace Palace Library, which is one of the most comprehensive and current international law libraries in the world accordingly throughout history.

THE STRUCTURE OF THE PCA

The PCA² has a three-part organizational structure consisting of an Administrative Council that oversees its policies and budgets, a panel of independent potential arbitrators known as the Members of the Court, and its Secretariat, known as the International Bureau, headed by the Secretary-General of the same Court.

Thereby, as part of its environmental dispute resolution services, the Permanent Court of Arbitration maintains a list of arbitrators who specialize in disputes relating to the environment and natural resources, as well as a list of scientific and technical experts who may be appointed as expert witnesses under the Permanent Court of Arbitration's Environmental Rules. The Permanent Court of Arbitration also maintains lists of arbitrators and experts who specialize in disputes relating to outer space activities in connection with its Rules for Arbitration of Disputes Relating to Outer Space Activities. This composition of the structure includes:-

¹ The convention for the Pacific settlement of International Disputes 1899.

- The Hague conventions of 1899 and 1907.

² The Permanent Court of Arbitration.

- **Administrative Council**

Contracting Parties' diplomatic representatives accredited to The Netherlands comprise the Administrative Council, under the chairmanship of the Netherlands Minister for Foreign Affairs. This body, in consultation with the Secretary-General, shapes the policy of the organization.

- **International Bureau**

The PCA's Secretariat - the International Bureau - consists of an experienced team of legal and administrative staff of various nationalities. They do the adjudication of matters which includes answering technical questions of law that arises between its members.

- **Members of the Court**

Members of the Court are potential arbitrators appointed by the PCA's Contracting Parties. Each Contracting Party is entitled to nominate up to four persons of "known competency in questions of international law, of the highest moral reputation and disposed to accept the duties of arbitrators" as "Members of the Court" accordingly.

JURISDICTION OF THE INSTITUTION

As pointed out above, although the Permanent Court of Arbitration was originally established for interstate arbitration, the Hague Conventions allow considerable flexibility in the constitution of a "special Board of Arbitration." Therefore, Pursuant to the various Optional Rules, the following parties may, in principle, agree to bring a case before the Permanent Court of Arbitration:

- Any two or more States;
- A State and an international organization (i.e. an intergovernmental organization);
- Two or more international organizations;
- A State and a private party; and
- An international organization and a private party.

LAWS APPLICABLE

- **Procedural Rules: -**

The law applicable to the proceedings is that chosen by the parties, in the first instance by agreeing to the application of a particular set of procedural rules. Modern procedural rules, such as the various Permanent Court of Arbitration Rules (and the UNCITRAL Rules from which they are derived), leave a great deal of procedural flexibility in the hands of the parties and the arbitral tribunal. There are few mandatory provisions, meaning that the parties may, by mutual agreement, deviate from or modify the procedural rules thus persuasive in nature. All of the Permanent Court of Arbitration Rules contain the general provision that the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that, at any stage of the proceedings, each party is given a full opportunity of presenting its case. In purely private commercial cases, and conceivably in certain other cases as well, the arbitral tribunal might be likely to apply, or

in any event, have reference to, the arbitration law of the place of arbitration (*lex loci arbitrii*) to fill gaps in the applicable rules. In inter-State arbitration, the arbitration agreement or ad hoc rules drawn up by the parties generally give the arbitral tribunal the express power to fill such gaps without reference to municipal law.

- **Substantive Laws: -**

Here again, arbitration gives the parties the flexibility to stipulate the law applicable to the substance of their dispute. The various Permanent Court of Arbitration rules provide that the arbitral tribunal shall apply the law chosen by the parties; in the absence of an agreement, the tribunal will apply either the applicable rules of general international law or another body of law prescribed by choice of law rules. Also in cases involving international organizations, the tribunal is directed to take due account of the rules of the organization concerned and to the law of international organizations and in cases involving private parties, the tribunal is directed to pay attention to the terms of the contracts or agreements in question and take into account the relevant trade usage. Finally, only with the agreement of the parties may the tribunal decide the dispute *ex aequo et bono* accordingly.

INSTITUTION OF PROCEEDINGS

Under the various PCA Rules³, the party initiating arbitration (the claimant) initiates arbitration by serving the other party (the respondent) with a notice of arbitration, which must contain the following information:

- A demand that the dispute be referred to arbitration.
- Names and addresses of the parties.
- Reference to an arbitration clause or arbitration agreement.
- Reference to the treaty, agreement, contract or other legal instrument (e.g., constituent instrument or decision of an international organization) out of which, or in relation to which the dispute arose.
- General nature of the case and indication of the amount involved;
- Relief or remedy sought and
- Proposal as to the number of arbitrators.

NB: The language or languages of the proceedings may be agreed upon by the parties. Meanwhile in the absence of an agreement, it will be determined by the tribunal. The tribunal may require that the parties produce translations of documents submitted into the language of the proceedings, and the registry may be requested to make arrangements for the translation of oral statements made at a hearing.

³ The Permanent Court of Arbitration Rules 2012.

MAJOR ACTIVITIES DONE BY THE PCA INCLUDE

There are several activities which are being performed by the Permanent Court of Arbitration and therefore it shall also be noted that the jurisdiction of the Permanent Court of Arbitration has been greatly expanded to include quite large areas of operation which are accordingly identified as seen below.

- **Arbitration.**

The PCA provides administrative support in international arbitrations involving various combinations of states, state entities, international organizations and private parties. These administrative activities include deciding cases between states and ensuring that the due formalities are followed in adjudicating matters between aggrieved parties. There is no tribunal per se. A tribunal or other dispute resolution body is established for each dispute submitted, and its method of constitution will depend on the applicable rules.

- **Appointing Authority.**

The Secretary-General of the Permanent Court of Arbitration may be called upon to act as the appointing authority, or to designate another appointing authority, for the appointment of arbitrators under the Permanent Court of Arbitration's Rules of Procedure, the United Nations Commissions on International Trade Law (UNCITRAL) Arbitration Rules, or other rules of procedure. These appointments are done on need-base cases.

- **Mediation or Conciliation.**

The PCA's functions are not limited to arbitration and also include providing support in other forms of peaceful resolution of international disputes, including mediation, conciliation, and other forms of alternative dispute resolution (ADR) as the Court thinks fit for the situations at hand.

- **Hearing Facilities.**

The PCA has access to hearing facilities at its international offices and around the world. These function includes hearing cases between states or any other international organisations through its delegated authorities and agents. The Court is also free to registration of new cases within its jurisdictions by its registrar in the office.

- **Fact-finding or Commissions of Inquiry.**

The Permanent Court of Arbitration is available to provide administrative support in fact-finding / commissions of inquiry involving various combinations of states, state entities, international organizations and private parties. This function helps in adjudicating reasonably by the court based on the actual facts of the case at hand before the Court.

- **Guest Tribunals.**

The PCA makes its facilities available upon request to tribunals established under the rules of certain international arbitration institutions, or pursuant to rules agreed to ad hoc i.e. specific purpose tribunals established by the court which is dissolved after performing such duties.

NOTE:

There are some cases that are pending before the Permanent Court of Arbitration on environmental issues and cases involving natural resources or similar issues were awarded during the past year. However presently, the Permanent Court of Arbitration acts as a registry of inter-state proceedings, investor-state arbitrations, and cases where parties are state or other public entities that come under the category of ‘other arbitration cases.’ All these cases involve environmental issues either directly or indirectly. The PCA was originally established to resolve the inter-state disputes. However due to the growing willingness of the other states and actors to avail the international mechanism to resolve a dispute relating to natural resources and environment led to the adoption of the PCA Rules in 2001 (Permanent Court of Arbitration, ‘Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or The Environment’ (2002) 41(1) International Legal Materials 202).

CONCLUSION AND SUGGESTION

The Permanent Court of Arbitration - PCA is an intergovernmental organization established in 1899 to facilitate arbitration and other forms of dispute resolution between states. It was the first global institution created for the adjudication of international disputes and has developed into a modern, multifaceted arbitral institution prepared to meet the rapidly evolving dispute resolution needs of the international community. And today the Permanent Court of Arbitration provides services for the resolution of disputes involving various combinations of states, state entities, intergovernmental organizations, and private parties. Its caseloads encompasses territorial, treaty, and human rights disputes between states, as well as commercial and investment disputes, including many disputes arising under bilateral and multilateral investment treaties.