

FOREWORD

When the Permanent Court of Arbitration (PCA) was founded just over a century ago the practice of referring disputes to international tribunals was unusual. Instead, *arbitration*, with its procedural emphasis on party-autonomy, was seen as the only acceptable way for sovereign states to settle their differences peacefully. War and neutrality, as Professor Shabtai Rosenne explains in his introduction to this most welcome publication of extracts from the proceedings of the International Peace Conferences, were regarded as inevitable realities of international relations as late as the mid-twentieth century. Moreover, a permanent tribunal with international jurisdiction would not have stood much chance of either success, or survival, at the end of the nineteenth century.

The First International Peace Conference in 1899 adopted the *1899 Convention for the Pacific Settlement of International Disputes*, the objectives of which were international disarmament and the strengthening of international dispute settlement as an alternative to war. The 1899 Convention also created the PCA in an effort to institutionalize dispute resolution through a third party mechanism. Governments, it should be recalled, needed a forum where they could settle their disputes, but they were at the time not yet ready or willing to submit to the jurisdiction of a court outside their territorial limits. The PCA's framework therefore provided the right mixture of permanency and flexibility. Its dispute settlement system served the international community well from 1899 until 1922, when states established, under the League of Nations, the Permanent Court of International Justice (PCIJ). Since its inception in 1946, the PCIJ's successor, the International Court of Justice (ICJ), has received far more exposure than the PCA ever has. This is undoubtedly due in part to the public nature of ICJ's hearings, as opposed to the confidentiality of arbitration.

While it has long been *the* dispute resolution method of choice for international commercial entities, international arbitration has only recently been re-discovered by states and intergovernmental organizations. Examples of this new trend are such recent arbitrations – held under the auspices of the PCA – as the arbitration between the United Kingdom and the United States concerning the *Heathrow Airport User Charges* (November 30, 1992), the arbitration concerning a *Loan Agreement between Costa Rica and Italy* (June 26, 1998), and the arbitrations between Eritrea and Yemen with respect to *Sovereignty of Various Red Sea Islands* (October 9, 1998), and *Maritime Delimitation* (December 17, 1999). At the

time of writing, the PCA's International Bureau is actively involved as registry in yet other inter-state arbitrations, as well as in a major arbitration involving an international organization.

One of the advantages of the PCA's flexible jurisdiction is its ability to address a wide range of disputes and disputants. Through the adoption of optional rules, modeled after the popular UNCITRAL Arbitration Rules, the PCA's capacity has grown to encompass disputes between states,¹ disputes involving states and international organizations,² disputes between parties only one of which is a state,³ and disputes between international organizations and private persons.⁴ In addition, the PCA continues to offer methods of dispute resolution other than arbitration, such as conciliation,⁵ fact-finding commissions of inquiry,⁶ and mediation. A product of the Hague Conventions and, as such, an older sibling of the ICJ, the PCA today is uniquely poised at the intersection of public international law at its most traditional, and private international law at its most progressive. The International Bureau of the PCA is, for example, currently serving as registry to a mass claims commission dealing with the damages arising out of the cessation of hostilities between two countries – a task not far removed from what the delegates at The Hague in 1899 had envisioned for the Court.

Jurisdictional flexibility enables the PCA to maintain its relevance and respond proactively to issues as they arise on the international agenda by developing, if appropriate, specific arbitration rules to deal with them. Such rules can be used, or referred to, in dispute resolution clauses of multilateral conventions or relevant bilateral agreements. This approach was applied most recently to the issue of conservation of natural resources and protection of the environment – an area where clear lacunae in the international system had been identified. Thus, on 19 June 2001, ninety-four Member States of the PCA adopted by consensus the *Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment*.⁷

¹ PCA Optional Rules for Arbitrating Disputes between Two States (1992), in *Permanent Court of Arbitration – Basic Documents*, pp. 41

67 (The Secretary-General and the International Bureau of the Permanent Court of Arbitration, The Hague 1998), also available at <http://www.pca-cpa.org> – “Basic Documents.”

² PCA Optional Rules for Arbitrating Disputes between Two Parties of Which Only One Is a State (1993), *id.* at pp. 69–96.

³ PCA Optional Rules for Arbitration Involving International Organizations and States (1996), *id.* at pp. 97–123.

⁴ PCA Optional Rules for Arbitration between International Organizations and Private Parties (1996), *id.* at pp. 125–152.

⁵ PCA Optional Conciliation Rules (1996), *id.* at pp. 153–170.

⁶ PCA Optional Rules for Fact-finding Commissions of Inquiry (1997), *id.* at pp. 171–184.

⁷ For the text of the PCA Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment, see <http://www.pca-cpa.org> – “Basic Documents.” See also *Inter-*

On behalf of the International Bureau of the PCA, I would like to take this opportunity to express sincere gratitude to the Asser Institute in The Hague for publishing this important book, which will facilitate access for English-speaking jurists to the drafting history of the 1899 and 1907 Hague Peace Conventions and be of significant value and interest to practitioners and scholars of international law. Special thanks and admiration are due to Professor Shabtai Rosenne, without whose initiative, vision, perseverance and plain hard work this publication might never have materialized.

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