



**Statement of the Permanent Court of Arbitration
to the Council of Europe Committee of Legal Advisers on Public International Law
(CAHDI) at its Sixty-Seventh Meeting**

under Agenda Item 7.2 “Peaceful Settlement of Disputes”, 20 September 2024

Delivered by H.E. Dr. hab. Marcin Czepelak, PCA Secretary-General

Mr. Chair, Distinguished Delegates and Observers,

1. Since this is the first meeting of the CAHDI that the Permanent Court of Arbitration, or PCA, is attending as an Observer, allow me to first express my gratitude for the opportunity to collaborate with the CAHDI. The PCA’s joining as Observer is a testament to our commitment to the values we share with the CADHI and the broader objectives of the Council of Europe—the promotion of human rights, democracy and the rule of law. The PCA furthers these objectives by providing a reliable framework for peaceful dispute resolution involving States and international organizations.
2. Building on the mention of the PCA in working document CAHDI (2023) 23 on Means of Peaceful Settlement of Disputes, I will take the opportunity today to provide further information about the PCA and recent developments in inter-State cases administered by the PCA. I will then make a few remarks regarding the impact of arbitration and other—in particular non-jurisdictional—means of inter-State dispute resolution.

THE PCA AND PENDING INTER-STATE CASES

3. As you may be aware, the PCA is an intergovernmental organization that was established to facilitate arbitration and other modes of dispute settlement between States. It was created in 1899 during the first Hague Peace Conference, making it the world’s oldest intergovernmental institution dedicated to the resolution of international disputes. In the 1930s, it was clarified that the PCA’s mandate includes the facilitation of resolution of so-called mixed disputes, involving State and private parties. These mixed disputes can be treaty-based or contract-based, and their resolution was seen as an integral component of the toil toward global peace. At the same time, inter-State dispute resolution remained, and remains, core to the PCA’s work.
4. In August 2023, the U.N. General Assembly adopted, by consensus, with 121 co-sponsors, Resolution 77/322 on the commemoration of the 125th anniversary of the PCA. This resolution reaffirms the shared mission of the PCA and the UN in the maintenance of international peace and security, the peaceful settlement of international disputes and the progressive development of international law, and recognizes the PCA’s important

contribution to the peaceful settlement of disputes. The Resolution also encourages States to make use of the PCA's services and those States that have not yet done so to accede to the PCA's founding conventions. Currently, with the entering into effect of the accession of Timor-Leste, which is in fact taking place today, the PCA has 124 Contracting Parties, including the majority—but not all—of the CAHDI member and observer States.¹

5. Calls to make use of the PCA's services, such as the one contained in the UN Resolution, build on the stable trend of a growing number of cases at the PCA in the last 25 years, both in inter-State arbitration, and more broadly. In the period since the Second World War up until the turn of the millennium, the PCA was actively involved in only 3 of the approximately 40 inter-State arbitrations that occurred in this time span. In comparison, in the last 25 years, the PCA has administered 40 inter-State proceedings, including the vast majority of inter-State arbitrations that took place during that time.
6. Looking at the PCA's activity more broadly, in 2023, the PCA acted as registry in a record-breaking 246 cases involving parties from over 110 States from all UN Regional Groups. 47 of those cases involved 21 different CAHDI member States, Participants or Observers. Proceedings administered by the PCA ranged from maritime disputes under the United Nations Convention on the Law of the Sea—the UNCLOS—and disputes under other bilateral or multilateral treaties, to investor-State disputes under investment treaties, to contract cases involving State entities or intergovernmental organizations.
7. Turning now to inter-State dispute resolution proceedings more specifically, the PCA is currently providing registry services in seven inter-State proceedings, six of which are arbitrations, while one is a neutral expert process. Four of the seven cases involve member States of the Council of Europe. I will briefly provide some information about each of these cases.
 - First, the PCA presently administers the arbitration regarding the “Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait”, which was instituted by Ukraine against the Russian Federation under Annex VII of the Law of the Sea Convention. The five-member Arbitral Tribunal is chaired by Judge Jin-Hyun Paik as President (a national of the Republic of Korea). The other members are Judge Boualem Bouguetaia (Algeria), Judge Alonso Gómez-Robledo (Mexico), Professor Alexander Vylegzhanin (Russian Federation), and Professor Vaughan Lowe KC (United Kingdom). In an Award of 21 February 2020 on Russia's preliminary objections to the jurisdiction of the Arbitral Tribunal, the Tribunal unanimously upheld Russia's objection that it had no jurisdiction over

¹ The following member States of the Council of Europe are not Contracting Parties: Andorra, Armenia, Azerbaijan, Bosnia & Herzegovina, Republic of Moldova, Monaco, San Marino. Of the Observer States, all but the Holy See/Vatican City are Contracting Parties.

Ukraine's claims to the extent that these necessarily required it to decide on the sovereignty of either Party over Crimea; found that the objection that the Tribunal had no jurisdiction over Ukraine's claims concerning activities in the Sea of Azov and in the Kerch Strait did not possess an exclusively preliminary character, and accordingly reserved this matter for consideration and decision in the proceedings on the merits; rejected the other objections to its jurisdiction; and requested Ukraine to file a revised version of its Memorial, taking full account of the scope of, and limits to, the Tribunal's jurisdiction as determined in the Award. After the filing of the Parties' further written submissions, a hearing on the merits and remaining issues of jurisdiction and admissibility is set to start this coming Monday at the seat of the PCA, at the Peace Palace in The Hague. Certain parts of the hearing are public and will be live-streamed on the PCA's website.

- A second pending UNCLOS Annex VII arbitration between Ukraine and the Russian Federation, the "Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen", concerns the interpretation and application of the Convention in respect of a dispute that arose from Russia's arrest and detention of three Ukrainian naval vessels and their respective crews for alleged violations of Russian criminal law. In June 2022, the Tribunal issued an award on Russia's preliminary objections to its jurisdiction. It considered, in particular, whether the relevant events constituted "military activities" excluded from the jurisdiction of the Tribunal pursuant to a reservation made by the Russian Federation in accordance with Article 298(1)(b) of the Convention. After challenges by the Russian Federation against two arbitrators were upheld by the Tribunal in March 2024, the two arbitrators resigned, necessitating their replacement.
- The third pending inter-State arbitration is a confidential dispute between the State of Qatar and the Kingdom of Bahrain pursuant to Article 32 of the Constitution of the Universal Postal Union.
- Fourth, in the "Bern Convention Arbitration" commenced in January 2023, the first ever proceeding under Article 18 of the Council of Europe Convention on the Conservation of European Wildlife and Natural Habitats of 19 September 1979, the Republic of Azerbaijan claims that the Republic of Armenia breached certain obligations under this Convention. The three-member Tribunal is chaired by Dr. Václav Mikulka (a national of Czechia). The other members are Judge Bruno E. Simma (a national of Germany and Austria), and Judge Nicolas Michel (a national of Switzerland).

- Another arbitration between the same parties was brought by the Republic of Azerbaijan under Article 27 of the Energy Charter Treaty in February 2023.²
- Finally, there are two ongoing proceedings under the Indus Waters Treaty of 1960, which, after over 10 years of negotiation, determined the rights and obligations of India and Pakistan in respect of rivers in the Indus basin. As put by the first Court of Arbitration constituted under that Treaty, which concluded its work in 2012, it is “an instrument critical to the life and well-being of hundreds of millions of people of India and Pakistan.” Currently, there is a pending arbitration instituted by Pakistan against India pursuant to the Treaty that concerns the interpretation and application of various parts of the Treaty governing the design or operation of Indian run-of-river hydroelectric plants. India does not participate in this arbitration. On 6 July 2023, the Court of Arbitration in this case rendered its Award on the Competence of the Court. It concluded, among other matters, that India’s non-appearance did not deprive the Court of competence, or have any effect on the establishment and functioning of the Court, including the final and binding nature of its awards. At the same time, it found that India’s non-appearance did not lessen the Court’s standing duty to verify that it was competent and that it had jurisdiction over the dispute before it. In April 2024, the Court of Arbitration, accompanied by PCA staff and an independent observer, conducted a site visit of a hydroelectric plant in the Kashmir and Jammu region administered by Pakistan, and in July 2024 it concluded its hearing for the first phase of the merits. An award can be expected in the coming months.
- At the same time, the PCA also provides support to neutral expert proceedings under the Indus Waters Treaty initiated by India against Pakistan regarding two particular Indian hydroelectric projects in the Indus basin. In those proceedings, as required by the Treaty, the World Bank appointed a qualified engineer as Neutral Expert to resolve the differences between the Parties. In June 2024, the Neutral Expert conducted a site visit of the power plants accompanied by delegations of both India and Pakistan. A phase related to competence is ongoing.

² The three-member Tribunal is chaired by Dr. Václav Mikulka as presiding arbitrator (a national of the Czech Republic). The other members are Judge Bruno E. Simma (a national of Germany and Austria), who was appointed by the Republic of Azerbaijan, and Judge Nicolas Michel (a national of Switzerland), who was appointed by the Republic of Armenia.

IMPACT OF ARBITRATION AND OTHER MEANS OF INTER-STATE DISPUTE RESOLUTION

8. As one of the subsidiary means for the determination of rules of law recognized by Article 38 of the Statute of the International Court of Justice, judicial decisions, including arbitral awards, play an important role in the interpretation and application of public international law. The just mentioned pending inter-State proceedings are contemporary examples of the many cases before the PCA dealing with politically sensitive questions of public international law.
9. Indeed, over the decades, numerous PCA cases have helped elucidate principles of international law and become part of the canon of public international law. These range from matters of sovereignty, as addressed for example in the *Island of Palmas Case* of 1925, to questions of the law of the sea. Notably, all but one arbitration under Annex VII of the Law of the Sea Convention were or are being administered by the PCA, including such cases as the “Chagos Marine Protected Area Arbitration” between Mauritius and the United Kingdom, “The Arctic Sunrise Arbitration” between the Netherlands and Russia, or “The ‘Enrica Lexie’ Incident” between Italy and India. Reasons for States to choose Annex VII Arbitration over the judicial settlement of their disputes may include the parties’ involvement in the tribunal’s composition, procedural efficiency and flexibility, as well as a greater range of options with regard to transparency and confidentiality. Arbitration also sometimes benefits from the perception that it requires a lesser sacrifice of sovereignty.
10. At the same time, as noted in working document CAHDI (2023) 23 on Means of Peaceful Settlement of Dispute and as is clear from Article 33 of the UN Charter, judicial settlement and arbitration are only one side of the coin when it comes to peaceful dispute resolution, and non-jurisdictional means, such as negotiation, good offices, mediation and conciliation, can provide equally, if not more, powerful tools toward the settlement of international disputes.
11. In this respect, it is worth noting that its founders from the start foresaw that the PCA would also play a role in these areas, referring to good offices and mediation, to inquiry, fact-finding, and conciliation. A notable example from recent years is that of the Timor Sea Conciliation between Timor-Leste and Australia, for which the PCA acted as registry. This was the first ever compulsory conciliation under Annex V of the UN Law of the Sea Convention, and it was successfully concluded in the spring of 2018 with the signing of a Maritime Boundaries Treaty between the two States. The Conciliation Commission in that case issued a very interesting report, in which it, among other things, reflected on the conditions and actions that had made it possible to reach a satisfactory resolution.

12. In fact, often we refer to PCA cases without realizing it. For example, the PCA contributed to the Eritrea-Ethiopia Claims Commission (EECC), which was mentioned a few times earlier today. The PCA acted as registry to the EECC for close to a decade, building on its previous experience with many claims processes dating back to 1914 and including the establishment of the Iran-United States Claims Tribunal (IUSCT). Many of you are aware that the PCA provided registry services to the Tribunal in its early stages and that hearings continued to be held at the PCA's headquarters in the Peace Palace until 2003. The PCA Secretary-General to this day maintains the role of designating the appointing authority for the IUSCT.
13. Through its work in these, and indeed all its other cases, the PCA not only contributes to the peaceful settlement of international disputes, but also to the progressive development of international law. Over a century of this work has allowed the PCA to build an unmatched institutional memory and expertise in international dispute settlement. It is this unique experience that the PCA hopes to share going forward in its role as an Observer to the CAHDI. Specifically, in light of the invitation to States to provide updates on cases concerning them, the PCA proposes to provide updates in future years on relevant arbitral awards rendered under its auspices in that year, to the extent such information is available to the public. The PCA is also happy to provide other information regarding inter-State proceedings if so requested by the CAHDI members.

* * *

14. At the Congress of the Members of the Court on the occasion of the 125th anniversary of the PCA, held at the Peace Palace in June this year, which some of you attended, the desirability and benefits of increased interaction between the PCA and national governments as well as other intergovernmental organizations was a recurring theme. Indeed, a Resolution of the Congress of the Members of the Court specifically encourages the PCA to further increase its engagement with States and create dialogue and synergies with regional fora such as this one. It is against this background that the PCA looks forward to actively contributing to the important work of the CAHDI on public international law and the peaceful settlement of disputes.
15. Thank you for your attention.