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Resolution of International Disputes: The Role of the Permanent Court of Arbitration – Reflections on the Centenary of the 1907 Convention for the Pacific Settlement of International Disputes

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Abstract
The Permanent Court of Arbitration (PCA) was established at the first Hague Peace Conference in 1899. During the past decade the PCA has progressed from a period of relative inactivity to a previously unsurpassed caseload. In this article the Secretary-General of the PCA reflects on the creation and early development of the PCA, before giving a detailed overview of recent arbitrations conducted under PCA auspices. The first part of this review, concerning treaty-based arbitration, analyses the role of the PCA in the resolution of disputes under the United Nations Convention on the Law of the Sea, illustrated by the arbitrations conducted in the *Guyana/Suriname*, *Barbados/Trinidad*, *Malaysia/Singapore*, and *Ireland/United Kingdom (MOX Plant)* disputes. The second part, which focuses on ad hoc arbitration, outlines the recently concluded arbitrations in the *Iron Rhine (Belgium/Netherlands)* and *Eritrea/Yemen* cases, as well as the work of the Eritrea–Ethiopia Boundary Commission and Claims Commission.

Key words
boundaries; humanitarian law; interstate arbitration; law of the sea; sovereignty; treaties

The year 2007 marked the hundredth anniversary of the Hague Peace Conference of 1907, a milestone in the development of international law and relations between states resulting in the conclusion of the 1907 Convention for the Pacific Settlement of International Disputes on 18 October 1907. Through this Conference, for the first time a global, coherent system emerged for the peaceful resolution of international disputes. The centenary of the 1907 Convention afforded the opportunity to reflect on the system of arbitration of the Permanent Court of Arbitration (PCA), which, more than a century on, remains an attractive dispute resolution mechanism for states and non-state entities alike. Whereas in 1907 a permanent arbitral forum

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where states could take disputes was an idealistic undertaking, and certainly ahead of its time, today states are accepting arbitral jurisdiction for their disputes at an unprecedented rate.

The purpose of this article is to present an overview of the achievements of the PCA in the light of these centennial reflections.

Against the background of a continuing growth in the number of interstate disputes, it is critical for governments in today's world to have ready access to reliable, efficient, and, above all, effective methods of dispute resolution. The delegates at the 1907 Hague Conference knew a world considerably less complex but no less dangerous than that of today, and world leaders attending the conference were determined to find a way to consolidate a system for interstate dispute resolution. It had been this rising concern among world leaders to manage conflict that had led to the first Hague Peace Conference of 1899, at which the PCA was established. The purpose of establishing the Permanent Court of Arbitration was to provide a permanent and readily available organization to serve as the registry for international arbitrations and commissions of inquiry, and, later, conciliations.

While the 1899 Conference was responsible for the establishment of the PCA, it was the 1907 Conference that created the conditions for its further development, in terms of both membership and the use of its services in the field of international dispute resolution. Although the PCA's growth during its early period of greatest use, between 1900 and 1921, has been rivalled only by what has taken place during the twenty-first century, this latter period has seen continuing progress towards the realization of some of the most ambitious objectives of the drafters of the founding Conventions.

1. Background

1.1. The 1907 Hague Peace Conference

It was of particular concern to the states represented at the 1907 Conference to consider the experience of the intervening period since 1899, including the 1899–1902 Boer War, the Russo-Japanese War of 1904–5, and the related Dogger Bank Incident of 1904.[1] At the head of the programme for the Second Peace Conference, the circular addressed by Czar Nicolas II to the states parties on 3 April 1906 listed '[i]mprovements to be made in the provisions of the Convention for the pacific settlement of international disputes as regards the Court of Arbitration and international commissions of inquiry'. This task was carried out by the First Commission of the 1907 Conference, assisted by the work of two committees of examination.[2]

1 S. Rosenne, *The Hague Peace Conferences of 1899 and 1907 and International Arbitration: Reports and Documents* (2001), xix.

2 See Report to the Conference from the First Commission on the Revision of the Convention of 1899 for the Pacific Settlement of International Disputes (Annex D to the minutes of the Ninth Plenary Meeting) (hereinafter Annex D), reproduced in Rosenne, *supra* note 1, at 223 ff. Page numbers hereinafter refer to those in the original text.

By 1907 the PCA had convened arbitrations on *Pious Fund of the Californias*,[3] *Preferential Treatment of Blockading Powers against Venezuela*,[4] *Japanese House Tax*,[5] and *Muscat Dhows*.[6] In addition, two international commissions of inquiry had been conducted by 1907 with regard to the *Incident in the North Sea (Dogger Bank Case)*,[7] and *'Tauvigno'*, *'Camouna'*, *and 'Gaulois'*.[8] By the outbreak of war in 1914, awards had been rendered in a further nine arbitrations,[9] and proceedings had been initiated in *Expropriated Religious Properties*[10] and *French Claims against Peru*.[11]

The 1907 Convention for the Pacific Settlement of International Disputes is more detailed than the 1899 Convention, elaborating on its framework with further provisions identified as necessary for the proper functioning of the PCA and its arbitration mechanism. These provisions included improved rules for the establishment and operation of commissions of inquiry,[12] clarification of the method for settlement of the *compromis*,[13] the establishment of a system of arbitration by summary procedure,[14] specification of the powers and duties of the arbitral tribunal,[15] and other detailed rules regarding the conduct of proceedings and the exchange of pleadings and documents.

The 1907 Peace Conference also considered several detailed propositions relating to the principle of compulsory arbitration,[16] as well as the possible establishment of a 'Court of Arbitral Justice' with a form of compulsory jurisdiction.[17] It was not possible to reach an agreement on these proposals at the 1907 Conference; however, it was noted from the outset that, with regard to certain subjects, obligatory resort to arbitration had already been adopted in international practice.[18] The achievement

3 *USA/Mexico*, Arbitration Agreement dated 22 May 1902; Award dated 14 October 1902.
4 Great Britain, Germany and Italy/Venezuela, Arbitration Agreement dated 7 May 1903; Award dated 22 February 1904.
5 Germany, Great Britain and France/Japan, Arbitration Agreement dated 28 August 1902; Award dated 22 May 1905.
6 France/Great Britain, Arbitration Agreement dated 13 October 1904; Award dated 8 August 1905.
7 Great Britain and Russia, Inquiry Agreement dated 25 November 1904; Report dated 26 February 1905.
8 France and Italy, Inquiry Agreement dated 20 May 1912; Report dated 23 July 1912. See also the arbitration in *'Tauvigno'*, *'Camouna'*, *and 'Gaulois'*, France/Italy, Arbitration Agreement of 8 November 1912. During the proceedings, the parties settled the matter by agreeing that compensation would be payable by the Italian government.
9 *Maritime Boundary Norway–Sweden (The Grisbårdana Case)*, Norway/Sweden, Award of 23 October 1909; *North Atlantic Coast Fisheries*, Great Britain/USA, Award of 7 September 1910; *Orinoco Steamship Company*, USA/Venezuela, Award of 25 October 1910; *Arrest and Restoration of Savarkar*, France/Great Britain, Award of 24 February 1911; *Canevaro Claim*, Italy/Peru, Award of 3 May 1912; *Russian Claim for Indemnities*, Russia/Turkey, Award of 11 November 1912; *French Postal Vessel 'Manouba'*, France/Italy, Award of 6 May 1913; *The 'Carthage'*, France/Italy, Award of 6 May 1913; *Dutch–Portuguese Boundaries on the Island of Timor*, The Netherlands/Portugal, Award of 25 June 1914.
10 Spain, France and Great Britain/Portugal, Arbitration Agreement dated 31 July 1913; Award dated 2 and 4 September 1920.
11 France/Peru, Arbitration Agreement dated 2 February 1914; Award dated 11 October 1921.
12 See Annex D, *supra* note 2, at 402–16; Hague Convention for the Pacific Settlement of International Disputes of 1907 (hereinafter 1907 Convention), Arts. 10–36.
13 See Annex D, *supra* note 2, at 425–31; 1907 Convention, *supra* note 12, Arts. 52–54 and 58.
14 See Annex D, *supra* note 2, at 439–41; 1907 Convention, *supra* note 12, Arts. 86–90.
15 See Annex D, *supra* note 2, at 435–6; 1907 Convention, *supra* note 12, Arts. 73–74.
16 See Annex D, *supra* note 2, at 455 ff.
17 See further Report of the Conference from the First Commission recommending the Creation of a Court of Arbitral Justice (Annex A to the minutes of the Ninth Plenary Meeting), reproduced in Rosenne, *supra* note 1, at 169 ff.
18 See Annex D, *supra* note 2, at 456.

of a standing court with an optional form of compulsory jurisdiction was not realized until the foundation by the League of Nations of the Permanent Court of International Justice (PCIJ).[19] Furthermore, it was not until 1929, after the entry into force of the General Treaty for the Renunciation of War as an Instrument of National Policy (the Kellogg-Briand Pact),[20] that acceptance of compulsory jurisdiction became a political reality.[21]

Against this background, the affirmation of the need to maintain a permanent organization,[22] capable of administering the world's major arbitrations on a consensual basis, stands out as an enduring contribution of the 1907 Conference. The 1907 Convention formed the basis of a formalized arbitration mechanism, the demand for which, notwithstanding a period of relative inactivity resulting from the creation of international judicial bodies by the international community, has since grown in recognition and use.[23]

1.2. International dispute settlement

Whereas it was the accepted position in international law in 1907 that recourse to war was a legitimate method for sovereign states of resolving their disputes, the following two decades saw the renunciation of war by treaty in the Kellogg-Briand Pact,[24] which entered into force on 24 July 1929 and is still in effect,[25] and later the obligations set out in Article 2(3) of the UN Charter that

> [a]ll Members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered

and in Article 2(4) that

> [a]ll Members shall refrain in their political relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.

The wide range of mechanisms available to states for the settlement of their international disputes pursuant to this obligation is enumerated in Article 33(1) of the UN Charter, which provides,

> The 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, or other peaceful means of their own choice.

Although positioned between 'conciliation' and 'judicial settlement', arbitration has more in common with judicial settlement than with any of the other dispute

19 See Statute of the Permanent Court of International Justice, Art. 36; Statute of the International Court of Justice, Art. 36(2).
20 General Treaty for the Renunciation of War as an Instrument of National Policy 1928, 94 LNTS 57.
21 S. Rosenne, *The Law and Practice of the International Court* (2006), II, 702.
22 1907 Convention, *supra* note 12, Art. 41.
23 See further speeches made at the commemorative session of the Administrative Council of the PCA on 18 October 2007 by Judge G. Guillaume, Professor P. Sands QC, and Professor J. Crawford SC, available at http://www.pca-cpa.org.
24 *Supra* note 20.
25 See, e.g., US State Department, *Treaties in Force 2007*, Section 2: Multilateral Agreements, at 158, available at http://www.state.gov/documents/organization/89668.pdf.

resolution mechanisms mentioned in Article 33 of the UN Charter.[26] The most significant characteristic common to 'arbitration' and 'judicial settlement' is that decisions both of international arbitral tribunals and of international courts are final and binding on the parties to a dispute. The 1907 Convention, which provides that international arbitration 'has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law',[27] adds that recourse to arbitration 'implies an engagement to submit in good faith to the award',[28] and, further, states that an award of an arbitral tribunal 'puts an end to the dispute definitely without appeal'.[29] Similarly, the Statute of the International Court of Justice (ICJ) provides that a judgment of that Court is 'final and without appeal'.[30]

1.3. The role of the PCA

Since its inception the PCA has been charged with administering various types of dispute resolution procedures, including conciliation and fact-finding. The parties to disputes in any of these types of procedure may be any combination of states, international organizations, and private entities. Although this has been a significant factor in the survival and recent growth of the PCA, allowing it by June 2008 to reach an all-time high of 28 pending cases, this latter feature was not expressly envisaged by the drafters of the 1907 Convention. Article 47 of the 1907 Convention, which reproduced Article 26 of the Convention of 1899 without amendment, provides,

> The International Bureau is authorized to place its premises and staff at the disposal of the signatory powers for the use of any special board of arbitration.
>
> The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-signatory Powers or between signatory Powers and non-signatory Powers, if the Parties are agreed to have recourse to this tribunal.

The PCA administered its first commercial arbitration between a corporation and a state in the 1935 case of *Radio Corporation of America* v. *China*,[31] which was submitted to a special board of arbitration constituted under paragraph 10 of the Traffic Agreement of 10 November 1928.[32] Sittings of the board were held at the Peace Palace in The Hague, 'the Bureau International de la Cour Permanente d'Arbitrage having kindly given the assistance of its organization for the functioning of this

26 Ibid., at 914.
27 1907 Convention, *supra* note 12, Art. 37, first paragraph.
28 Ibid., Art. 37, second paragraph.
29 Ibid., Art. 81. See also ibid., Art. 83, on requests for revision of the award.
30 Statute of the International Court of Justice, Art. 59. See also Art. 61 on applications for revision of the judgment.
31 Published in (1935) 3 *Reports of International Arbitral Awards* 1621, (1935) 81 ILR 26, (1936) AJIL 353, (1937) *Reports of International Arbitral Awards* 197.
32 Award, (1935) 3 *Reports of International Arbitral Awards* 1621.

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special jurisdiction of arbitration'.[33] This precedent has since been followed in a number of international commercial arbitrations.[34]

Today it has been noted that, '[g]iven the time and expense involved in conducting a major international commercial arbitration', such as the hiring of rooms and possibly also the appointment of a secretary, a registrar, translators, and stenographers, 'the PCA's facilities and the staff of the International Bureau have much to commend themselves to parties'.[35] In addition, the broad choice allowed to the parties to any dispute in terms of the procedural rule which will apply – from the rules of The Hague Conventions of 1899 or 1907, the PCA Optional Rules, or other appropriate rules, such as the UNCITRAL Arbitration or Conciliation Rules, or ad hoc rules tailored to the specific dispute – 'shows a great deal of modernity and forward thinking by the PCA'.[36]

2. Recent case law of the PCA

The following consideration of the work of the PCA is set out according to the two principal ways in which states decide to submit disputes to arbitration, namely: first, through accession to treaties providing for arbitration as the means to settle *future* disputes arising out of that treaty or coming within its scope, with particular reference to arbitration under the United Nations Convention on the Law of the Sea (UNCLOS); and, second, through the conclusion of an agreement to submit an *existing* dispute to arbitration.

2.1. Arbitration pursuant to clauses in treaties, with particular reference to UNCLOS

A number of international treaties provide for arbitration under the auspices of the PCA, particularly in the field of the protection of international investments. Treaties relating to international investment increasingly refer to the PCA in relation to dispute resolution. Arbitration is generally selected as the means for resolving disputes arising under bilateral investment treaties, and frequently some assistance from the PCA is written into the arbitration procedure. For example, France and India have signed a bilateral investment treaty in which they agree to submit any dispute arising under the treaty between investors and a contracting party to a three-member arbitral tribunal. The treaty expressly states that if the appointment of an arbitrator is not made within the time limit provided, either party may request the Secretary-General of the PCA to make the appointment.[37] Similar provisions are

33 Ibid., 1624.
34 See, e.g., information on pending PCA cases, available at http://www.pca-cpa.org. At the time of writing, the cases at the PCA include 17 investor-state arbitrations under bilateral or multilateral investment treaties, and seven arbitrations under contracts between private entities and states or state-controlled entities.
35 A. Redfern and M. Hunter (eds.), *Law and Practice of International Commercial Arbitration* (2004), 70.
36 Ibid.
37 *Accord sur l'encouragement et la protection réciproques des investissements*, 2 September 1997, Fr.-India, J.O., 6 May 1999, (2000) 47 *Recueil des traités* 6791, Art. 9(3).

also made in that treaty for disputes arising between the two contracting parties to the treaty.[38]

The PCA is also referred to in the dispute settlement provisions of multilateral instruments such as the Energy Charter Treaty (ECT).[39] This treaty sets out principles for international trade, transit, and investment in energy resources, such as oil and gas, and has been signed, at the time of writing, by 51 states.[40] The ECT, which provides that disputes between contracting parties may be referred to a three-member arbitral tribunal, goes on to state that, unless otherwise agreed by the parties, the tribunal shall sit in The Hague and use the premises and facilities of the PCA.[41] The ECT also provides that the Secretary-General of the PCA may be requested to appoint an arbitrator to break a deadlock caused by failure by a respondent to appoint an arbitrator, or failure by the parties to agree on a third arbitrator.[42]

The treaty which is of particular relevance in treaty-based arbitration under PCA auspices is UNCLOS,[43] which provides, in effect, for a system of compulsory recourse to arbitration. UNCLOS was concluded to provide a regulatory framework for use of the world's seas and oceans, to ensure the conservation and equitable usage of resources and the marine environment, and to ensure the protection and conservation of the living resources of the sea. UNCLOS addresses matters such as sovereignty and rights of usage in maritime zones, navigational rights, and protection and preservation of the marine environment. From among the 115 original signatories, 105 states have ratified UNCLOS; a further 15 have acceded to it.[44]

Part XV(2) of UNCLOS lays down rules for the binding settlement of disputes arising out of its interpretation or application. When signing, ratifying, or acceding to UNCLOS, a state may make a declaration[45] choosing one of the following means for settlement of disputes concerning the interpretation and application of the Convention:

1. the International Tribunal for the Law of the Sea (ITLOS) in Hamburg;
2. the International Court of Justice in The Hague;
3. ad hoc arbitration (in accordance with Annex VII of the Convention); or
4. a 'special arbitral tribunal' constituted for certain categories of dispute (established under Annex VIII of the Convention).

If disputing states have declared preferences for different dispute resolution methods, according to Article 287(5) the default dispute settlement mechanism is arbitration under Annex VII, unless the states agree otherwise. According to Article 287(3),

38 Ibid., Art. 10.
39 Energy Charter Treaty of 17 December 1994, (1995) 34 ILM 360 (hereinafter ECT).
40 See list of ratifications available at http://www.encharter.org/fileadmin/user_upload/document/Public_ratification_Treaty.pdf.
41 ECT, *supra* note 39, Part V, Art. 27(3)(k).
42 Ibid., Art. 37(3)(d).
43 United Nations Convention on the Law of the Sea of 10 December 1982, 1833 UNTS 3 (hereinafter UNCLOS).
44 See Consolidated Table of Ratifications, Accessions, etc., published by the United Nations Division for Ocean Affairs and the Law of the Sea, available at http://www.un.org/Depts/los/reference_files/status2007.pdf.
45 UNCLOS, *supra* note 43, Art. 287(1).

states that do not declare any preference are deemed to have accepted arbitration under Annex VII in any event. Few states have, as yet, invoked the optional exceptions under Article 298, although the right to make later use of this article has commonly been expressly reserved in declarations by ratifying states such as Iran, India, Morocco, and Nicaragua.[46]

Arbitration has a number of general and traditionally cited advantages over other methods of dispute resolution, which has made it an attractive choice as a default mechanism to the drafters of UNCLOS, notably the flexibility afforded to the parties in the choice as to the members of the arbitral tribunal.[47] Each party to an arbitration may usually appoint to its case an arbitrator with the knowledge and experience that the party considers appropriate, with each party appointing at least one arbitrator in most PCA-administered arbitrations. Even more autonomy is granted under UNCLOS, according to which parties to the dispute not only each nominate a party-appointed arbitrator, but also agree on the selection of three further tribunal members, including a president, provision being made for selection of tribunal members should the parties be unable to reach agreement.[48] Direct involvement in the composition of the body that will decide the case is a confidence-building aspect of arbitration for most states, who may even appoint one of their own nationals pursuant to Annex VII.[49]

The dispute settlement provisions found in Part XV of UNCLOS, providing for compulsory recourse to arbitration by unilateral application, are said to represent 'a major innovation in international litigation practice, namely, the compulsory recourse to arbitration by unilateral application'.[50] Since the entry into force of the Convention in 1994, there have been no fewer than five instances of compulsory recourse to arbitration. It has been suggested that, given the 'unforeseen possibilities'[51] it entails, this innovation, coupled with a relative lack of interest in compulsory jurisdiction by states, indicates that the concept of the compulsory jurisdiction is in need of thorough review, and, significantly, that such review 'should be based on compulsory recourse either to the International Court (including the possibility of recourse to an *ad hoc* chamber) or to an *ad hoc* system of arbitration along the lines set out in Part XV of the Convention on the Law of the Sea'.[52]

Although UNCLOS, unlike the ECT,[53] does not provide for use of the premises and facilities of the PCA, in practice the PCA has shown itself to be ideally placed as an institutional forum for ad hoc arbitrations conducted under UNCLOS. It has now served

46 For this and the following information, see Table of Declarations and Statements published by the United Nations Division for Ocean Affairs and the Law of the Sea, as updated on 23 October 2007, available at http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm.

47 See S. Rosenne and L. B. Sohn (eds.), *United Nations Convention on the Law of the Sea, 1982: A Commentary* (1989), V, 42, n. 4, citing, e.g., the statements in the Plenary during the fourth session (1976) by representatives of France, 59th meeting, paras. 8–10, V Off. Rec. 14; and Madagascar, 61st meeting, para. 44, V Off. Rec. 34; N. Klein, *Dispute Settlement in the UN Convention on the Law of the Sea* (2005), 56.

48 UNCLOS, *supra* note 43, Annex VII, Art. 3.

49 Ibid., Art. 3(c).

50 Rosenne, *supra* note 21, at 802.

51 Ibid.

52 Ibid.

53 *Supra* note 39.

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as registry for four arbitral tribunals constituted under Annex VII of the Convention, three of which were recently concluded: *Guyana/Suriname*,[54] *Barbados/Trinidad and Tobago*,[55] the first Annex VII maritime delimitation, and *Malaysia/Singapore*,[56] a dispute concerning land reclamation, which was concluded by an award on agreed terms reflecting a settlement negotiated between the parties. The conduct of the proceedings in these cases has demonstrated that, in addition to the procedural advantages offered by arbitration, there are further benefits for parties who choose to conduct their arbitration under the auspices of the PCA. Although not a court composed of judges holding a fixed term of office and with jurisdiction on a standing basis, but, rather, a permanent framework for arbitral tribunals established under its auspices, the PCA is able to offer administrative support that relieves the tribunal and the parties of many managerial and logistical tasks. Some examples will be considered below in relation to recent arbitrations conducted at the PCA.

2.1.1. A growing body of expertise

As a standing institution that provides a forum for dispute resolution on a consensual basis, the PCA has developed a body of expertise and relevant procedural precedent that will prove invaluable in future disputes submitted to arbitration under UNCLOS. Such precedent was utilized for example in the recent *Guyana/Suriname* arbitration,[57] which concerned the delimitation by the drawing of a single maritime boundary of the common maritime boundary of Guyana and Suriname in the territorial sea, continental shelf, and exclusive economic zone. The case concerned, further, the alleged unlawful threat of use of force by Suriname in the expulsion of a Guyanese concession holder from the disputed area on 3 June 2000, and the failure of the parties to comply with their obligations under Articles 74(3) and 83(3) of UNCLOS to make every effort to enter into provisional arrangements of a practical nature and to refrain from taking action which might jeopardize the reaching of a final agreement pending delimitation of the continental shelf and exclusive economic zones. The tribunal unanimously rejected Suriname's jurisdictional objections and delimited the maritime boundary in the territorial sea in order to give effect to the special circumstance of a historical agreement between the parties that the delimitation should allow for Suriname to have navigational control of the approaches to the Corentyne River. The delimitation in the continental shelf and exclusive economic zone was carried out according to the method accepted in international jurisprudence and state practice of drawing a provisional equidistance line which fell to be adjusted according to any special circumstances, which the tribunal found did not exist in that case. The tribunal upheld Guyana's claim that Suriname had had unlawful recourse to the threat of use of force and held, further, that both parties had violated their respective obligations under Articles 74(3) and 83(3) of the Convention. In respect of these violations, the tribunal granted declaratory relief.

54 *Guyana/Suriname* (Award of 17 September 2007), available at http://www.pca-cpa.org.
55 *Barbados/Trinidad and Tobago* (Award of 11 April 2006), (2006) 45 ILM 798, available at http://www.pca-cpa.org.
56 *Malaysia/Singapore* (Award on Agreed Terms of 1 September 2005), available at http://www.pca-cpa.org.
57 *Supra* note 54.

In carrying out the maritime delimitation, the tribunal in *Guyana/Suriname* had recourse not only to the jurisprudence of the ICJ cited extensively by the parties, but also to another recent maritime delimitation case conducted under PCA auspices, the *Barbados/Trinidad & Tobago* arbitration. This case, initiated in February 2004 by Barbados under the Law of the Sea Convention, concerned the delimitation of the exclusive economic zone and continental shelf in the Caribbean Sea region that separates the two island states. The tribunal's award in this case established the maritime boundary between Barbados and Trinidad and Tobago and required the parties to take steps to conserve fish stocks and ensure certain fishing rights of Barbadian fishermen who had traditionally fished in Trinidad and Tobago waters.

The decision in *Barbados/Trinidad & Tobago* brought an end to three decades of unsuccessful attempts to agree on the issues therein addressed. The proceedings were concluded by way of a unanimous final award in little more than two years; the final award was rendered within less than six months of the conclusion of the substantive hearings held in October 2005. This is an example of the efficiency that institutional arbitration can provide, particularly in that the parties and the tribunal relied extensively on the PCA for support, including the day-to-day administration of the case. Having the PCA perform various administrative tasks significantly alleviated the burdens on the tribunal and the parties, resulting in faster proceedings and reduction of costs. Furthermore, the tribunal's award in *Barbados/Trinidad & Tobago* has been described as a 'landmark' development in the law of the sea.[58]

2.1.2. Expert assistance

The PCA provides assistance with the identification of experts to assist the tribunal with technical matters, such as the preparation of maps of maritime or land boundaries, which can be used to great effect depending on the issues which arise. This was demonstrated in the *Guyana/Suriname* arbitration, where the Tribunal, in addition to appointing a hydrographer in connection with the substantive issue of the maritime delimitation,[59] nominated an expert to provide assistance in the disclosure of documents following a disagreement between the parties on access to certain archive files.[60] The assistance thus provided in the resolution of the issue between the parties on the production and disclosure of documents prevented a dispute on a preliminary matter from impeding the resolution of the substantive issues.[61]

58 B. Kwiatkowska, 'The 2006 Barbados/Trinidad and Tobago Award: A Landmark in Compulsory Jurisdiction and Equitable Maritime Boundary Delimitation', (2007) 22 *International Journal of Marine and Coastal Law* 7. See also A. Blake and G. A. Campbell, 'Conflict over Flying Fish: The Dispute between Trinidad & Tobago and Barbados', (2007) 31(3) *Marine Policy* 327; B. Kwiatkowska, 'The 2006 UNCLOS Annex VII "Barbados/Trinidad and Tobago" Award: Landmark Progress in Compulsory Jurisdiction and Equitable Maritime Boundary Delimitation', (2007) 19 *Hague Yearbook of International Law* 33; B. Kwiatkowska, 'Barbados/Trinidad and Tobago: Award on Jurisdiction and Merits', (2007) 101 (1) AJIL 149; P. Weckel and A. Guillaume, 'Sentence du 11 Mai 2006, Délimitation de la Zee et du plateau continental (Barbade c. Trinite-et-Tobago)' (2006) 3 RGDIP 713.

59 *Guyana/Suriname*, Order No. 2 of 18 July 2005.

60 *Guyana/Suriname*, Order No. 1 of 18 July 2005; Order No. 3 of 12 October 2005; Order No. 4 of 12 October 2005; Order No. 5 of 16 February 2005.

61 *Guyana/Suriname*, Award of the Tribunal, *supra* note 54, at paras. 16–99.

2.1.3. Administrative support and a channel of communication

Further, the PCA through its International Bureau provides a level of managerial and administrative support which is not available to other ad hoc tribunals. This can provide assistance in the resolution of disputes by means other than arbitration, the utility of which was demonstrated by the settlement reached in the *Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia/Singapore)*.[62] This case was initiated by Malaysia on 4 July 2003, pursuant to Annex VII of the 1982 Convention, concerning certain land reclamation activities carried out by Singapore that were said to infringe Malaysia's rights under the Convention in and around the Straits of Johor.

Malaysia's notification to Singapore was accompanied by a request to ITLOS for provisional measures under Article 290 UNCLOS. In October 2003 ITLOS issued an Order prescribing certain provisional measures, including the establishment of a group of independent experts to conduct a one-year study on the land reclamation activities and to recommend measures to deal with any adverse effects.[63] Following issuance of the ITLOS Order, the arbitral tribunal and the group of independent experts (GOE) were duly constituted. The PCA served as registry for the tribunal. After the report of the GOE was submitted to the parties in November 2004, the parties transmitted this report to the tribunal and requested that a hearing be arranged at which the parties could apprise the tribunal of the progress of consultations that had taken place between them. At the hearing, which took place at The Hague on 10 January 2005, the tribunal was informed that the parties had agreed *ad referendum* on the text of a draft settlement agreement, signed on 26 April 2005, providing, with respect to the dispute submitted by Malaysia to the tribunal,

> 13. This Agreement is in full and definitive settlement of the dispute with respect to the land reclamation and all other issues related thereto. The Parties agree that the issue pertaining to the maritime boundaries be resolved through amicable negotiations, without prejudice to the existing rights of the Parties under international law to resort to other pacific means of settlement.
>
> 14. This Agreement accordingly terminates the *Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)* upon the agreed terms.
>
> 15. The Parties shall forthwith jointly request that the Arbitral Tribunal in the *Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)* adopt the terms of this Agreement in the form of an agreed Award which is final and binding upon the Parties.

Pursuant to the parties' joint request, on 1 September 2005 the tribunal delivered a final award binding upon the parties in the terms set out in the settlement agreement, thereby terminating the proceedings.

The successful resolution of this dispute has been cited as an example of the utility of the institutional procedures under UNCLOS, 'in particular the availability of the GOE tasked to conduct an impartial fact-finding mission. . . . [I]t could be said that, in contrast, the absence of such institutional procedures unnecessarily aggravated

62 *Supra* note 56.
63 For the full text of the ITLOS Order see www.itlos.org.

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the situation where, notably, both countries had already decided that some form of judicial or arbitral settlement would be suitable in the cases of the *Pedra Branca/Pulau Batu Puteh* and water disputes'.[64] It has also been cited as a possible precedent for other ongoing maritime disputes such as the need to develop appropriate means to handle the dispute between China and some south-east Asian countries over territorial claims to the Spratly Islands.[65] The case has also been invoked in the context of the wider foreign-policy benefits of resort to pacific settlement of disputes. At the general level, the fact that countries in the region 'have even started to use international judicial organs to settle their maritime disputes' has been hailed by an experienced commentator as a trend 'from the rule of power to rule of law' in the marine legal order in east Asia.[66]

2.1.4. Assistance in drafting procedural rules

States have also called on the PCA to assist in drafting detailed procedural rules regarding matters such as evidence and confidentiality, the hearing of witnesses, the allocation and sharing of costs, and the publication of the award, particularly, for instance, in the *MOX Plant* case.[67] This case concerned a sensitive subject matter, namely, a decision made by the United Kingdom in 1993 to allow British Nuclear Fuels Limited, a UK corporation, to build a mixed oxide fuels (MOX) plant for the reprocessing of spent nuclear fuel on the coast of the Irish Sea. In October 2001 Ireland initiated arbitration proceedings pursuant to Part XV of Section 2 and in accordance with Annex VII UNCLOS, requesting that the arbitral tribunal find, *inter alia*, that the United Kingdom had failed (i) to take measures to prevent, reduce, and control pollution of the marine environment of the Irish Sea from discharges of radioactive materials; (ii) to put in place measures in the event of the release of radioactive materials as a result of accidents or terrorist acts; and (iii) correctly to assess the damage to the environment by taking into account relevant occurrences.

This dispute is also interesting from the point of view of the jurisdictional questions raised. The United Kingdom objected to the jurisdiction of an arbitral tribunal established under UNCLOS on the grounds that the parties' dispute fell within the scope of European Community (EC) law. The United Kingdom argued that EC member states have, under the EC Treaty, conferred exclusive competence on the EC in the areas of, *inter alia*, the conservation and management of sea-fishing resources and some aspects of the prevention of marine pollution; and that, under Article 292

64 C. Lim, 'The Uses of Pacific Settlement Techniques in Malaysia–Singapore Relations', (2005) 6 *Melbourne Journal of International Law* 313, at 332. The case concerning *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* was submitted to the ICJ on 24 July 2003 and the ICJ rendered its Judgment on 23 May 2008.

65 Ibid., at 332 and n. 104.

66 Z. Keyuan, 'Implementing the United Nations Convention on the Law of the Sea in East Asia: Issues and Trends', (2005) 9 *Singapore Yearbook of International Law*, 37, 53. See further N. Schrijver, 'Practising International Law at the International Tribunal for the Law of the Sea: The Case Concerning Land Reclamation in and Around the Straits of Johor (Malaysia v. Singapore), Application for Provisional Measures', (2005) 6 (1) *Griffin's View on International and Comparative Law* 35; J. Leong, 'Singapore and Malaysia: Recent Bilateral Developments' (2004) 24 *Singapore Law Review* 1.

67 *Ireland/United Kingdom (MOX Plant Case)* (Rules of Procedure of 25 October 2001), available at http://www.pca-cpa.org.

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of the EC Treaty, member states of the EC undertake not to submit a dispute concerning the interpretation or application of the EC Treaty to any method of settlement other than those provided for therein. The European Commission, being also of the opinion that by instituting proceedings under UNCLOS, Ireland had failed to fulfil its obligations as a member of the EC,[68] brought the issue of jurisdiction before the European Court of Justice (ECJ) on 15 October 2003.[69] In view of the possible jurisdictional problems which could arise, in 2003 the arbitral tribunal stayed its own proceedings pending the determination of the question by the ECJ. In May 2006 the ECJ issued its judgment,[70] in which it found, essentially, that the questions of jurisdiction that had been raised concerned the internal operation of a separate legal order, namely the legal order of the EC, and that those issues had to be resolved within the institutional framework of the EC.

This case, now formally closed,[71] was a landmark in the development and history of UNCLOS, as its subject matter – dealing with protection and preservation of the marine environment, but also matters of competing jurisdiction – had never been brought before a tribunal constituted pursuant to the compulsory dispute settlement procedures of UNCLOS. Although the case was not heard on the merits, it has been the subject of extensive critical analysis[72] and will also be studied closely by future arbitral tribunals that are confronted with international treaties between EC member states relating to the protection of the environment.

2.1.5. PCA initiatives

In addition to having provided services tailored to the actual requirements of parties in the cases described above, the PCA has taken initiatives to address the anticipated requirements of the parties to other disputes in this area, including the convening of a working group to draft specialized rules and make recommendations concerning environmental law disputes. Pursuant to Articles 8(3) and 27(5) of the PCA Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the

68 For the procedural background, see Case C-459/03, Judgment, *Commission v. Ireland*, 30 May 2006, paras. 49–57.

69 Case C-459/03, Action brought on 30 October 2003 by the Commission of the European Communities against Ireland, *Official Journal of the European Communities* (2004/C 7/39).

70 Case C-459/03, Judgment, *Commission v. Ireland*, 30 May 2006, paras. 168–183.

71 See Order No. 6, 'Termination of Proceedings', 6 June 2008, available at www.pca-cpa.org.

72 See J. Finke, 'Competing Jurisdiction of International Courts and Tribunals in Light of the MOX Plant Dispute', (2007) 49 *German Yearbook of International Law* 307; N. Lavranos, 'The MOX Plant and IJzeren Rijn Disputes: Which Court is the Supreme Arbiter?', (2006) 19 (1) LJIL 223; M. B. Volbeda, 'The MOX Plant Case: The Question of "Supplemental Jurisdiction" for International Environmental Claims under UNCLOS', (2006) 42 (1) *Texas International Law Journal* 211; M. Tanaka, 'Lessons from the Protracted MOX Plant Dispute: A Proposed Protocol on Marine Environmental Impact Assessment to the United Nations Convention on the Law of the Sea', (2004) 25 (2) *Michigan Journal of International Law* 337; R. Churchill and J. Scott, 'The MOX Plant Litigation: The First Half-Life', (2004) 53 (3) ICLQ 643; V. Röben, 'The Order of the UNCLOS Annex VII Arbitral Tribunal to Suspend Proceedings in the Case of the MOX Plant at Sellafield: How Much Jurisdictional Subsidiarity?', (2004) 73 (2) *Nordic Journal of International Law* 223; Y. Shany, 'The First MOX Plant Award: The Need to Harmonize Competing Environmental Regimes and Dispute Settlement Procedures', (2004) 17 (4) LJIL 815; B. Kwiatkowska, 'The Ireland v. United Kingdom (MOX Plant) Case: Applying the Doctrine of Treaty Parallelism', (2003) 18 (1) *International Journal of Marine and Coastal Law* 1; M. J. C. Forster, 'The MOX Plant Case: Provisional Measures in the International Tribunal for the Law of the Sea', (2003) 16 (3) LJIL 611; D. J. Devine, 'Provisional Measures Ordered by the International Tribunal for the Law of the Sea in the Area of Pollution: The MOX Plant Case', (2003) 28 *South African Yearbook of International Law* 263.

Environment, adopted on 19 June 2001, the PCA maintains lists to which its member states have agreed to nominate one environmental law expert and one environmental science expert.[73] These lists are made available to assist the parties, the tribunal, and/or the appointing authority, depending on the circumstances of the case. Many of the experts on the current lists are experts on the law of the sea.[74]

2.2. Recent arbitrations under ad hoc agreements

As outlined above, the PCA also deals with arbitrations between states that do not arise under a previously signed treaty or agreement, but where, instead, an agreement to arbitrate is reached after the dispute has arisen. Parties may, therefore, enter into agreements providing for arbitration at the PCA at any time.

2.2.1. Belgium/Netherlands: Iron Rhine arbitration

An interesting example of a case submitted in this way is the arbitration between Belgium and the Netherlands[75] concerning a historical railway built in 1879, known as the 'Iron Rhine', that runs from Belgium to Germany, via Dutch territory. The Iron Rhine railway traces its legal origins to a right of transit across Dutch territory that was conferred on Belgium and later elaborated through several treaties concluded in the nineteenth century. The railway was used intermittently for over a century, but had fallen into disuse by 1991. During the 1990s the Netherlands created several nature reserves on the path of the old railway. In 1998 Belgium sought to reactivate the railway on the basis of its treaty rights. However, the Netherlands was anxious to regulate any reactivation of the railway to ensure that the Dutch nature reserves would not suffer damage.

For a number of years the two states attempted to negotiate the terms of any reactivation project. They were unsuccessful, and, in 2003, agreed that the matter be submitted to arbitration at the PCA. The disagreement turned on two main points: first, the extent to which Belgium's right to reactivate the railway in Dutch territory was constrained by Netherlands environmental law; and, second, how the costs of any reactivation in Dutch territory were to be shared between the two states. The Netherlands submitted, among other things, that it had the right to impose the building of under- and overground tunnels along Dutch parts of the railway, at Belgium's expense.

The tribunal of five arbitrators (including one Dutch and one Belgian arbitrator) determined that Belgium's reactivation plans were restricted by Netherlands environmental law, but that such restrictions could not be so burdensome as to deny Belgium's right of transit nor render it unreasonably difficult. Accordingly, the Netherlands was entitled to impose a requirement to build under- and overground tunnels

73 See PCA Annual Report 2006, 11. See also Permanent Court of Arbitration, Peace Palace Papers Series, *International Investments and the Protection of the Environment: The Role of Dispute Resolution Mechanisms* (2001).

74 See PCA Annual Report 2006, Annex 7.

75 Belgium/Netherlands (Iron Rhine Arbitration) (Award of 24 May 2005), in Permanent Court of Arbitration Award Series, The Iron Rhine (IJzeren Rijn) Arbitration (Belgium–Netherlands) Award of 2005 (2007). Full text of the Award available at http://www.pca-cpa.org.

on sections of its territory, but the costs of this were to be shared between the two states.

The issues in dispute in this case were decided in large part by the identification of Belgium's rights under the nineteenth-century treaties, while upholding rights of the Netherlands that would not conflict with the treaty rights of Belgium. The tribunal's decision is an important example of the achievement of a balance between the rights of one state over the territory of another by virtue of a treaty, on the one hand, and the residual sovereignty of the other state, on the other. In the published view of the co-agent of the Netherlands in this case, 'in keeping with the work of art of the Iron Rhine tribunal . . . are the words which Sir Gerald Fitzmaurice wrote in 1951: "that in the last resort all interpretation must consist in the exercise of common sense by the judge, applied in good faith and with intelligence"'.[76] This arbitration was commenced in July 2003. In less than two years the case was concluded with a unanimous final award rendered in May 2005.

2.2.2. Eritrea/Yemen

The Eritrea–Yemen arbitration[77] involved a dispute between the two states with respect to sovereignty over a number of islands in the Red Sea and associated natural resources. In December 1995, when Eritrean naval patrols discovered a small Yemeni military presence on one of the islands, the dispute over the islands erupted in armed hostilities, which resulted in a stalemate, with Eritrean forces occupying one island and Yemeni forces occupying another. An agreement to arbitrate the dispute was concluded between the two states in 1996 and the PCA was invited by the arbitral tribunal to act as its registry. At the request of the two states, this arbitration was divided into two phases: the first-phase award concerning territorial sovereignty was rendered in October 1998, and the second-phase award concerning maritime delimitation was rendered just over a year later in December 1999.

In the first phase, Eritrea contended that on gaining independence in 1993 it inherited title to the islands from Ethiopia, which had in turn on independence inherited title from Italy. Yemen argued that it had held title to the islands during the Middle Ages, before the Ottoman Empire controlled the area, and that after the collapse of the Ottoman Empire at the end of the First World War, title to the islands reverted to Yemen. Both parties supplied the tribunal with extensive evidence supporting their claims to sovereignty. In this regard, the parties relied, among other things, on displays of government authority over the islands, recognition by other states of their purported title, and a large number of maps, historical and modern, attributing the islands to either one state or the other. The tribunal ruled that Eritrea had sovereignty over two sets of islands that were within 12 miles of its coast,

76 I. van Bladel, 'Iron Rhine Case and the Art of Treaty Interpretation', in N. Blokker, R. Lefeber, L. Lijnzaad, and I. van Bladel (eds.), *The Netherlands in Court: Essays in Honour of Johan G. Lammers* (2006), 1, at 17. See also V. Barral, 'La sentence du Rhin de Fer, une nouvelle étape dans la prise en compte du droit à l'environnement par la justice internationale', (2006) 3 RGDIP 647; I. van Bladel, 'The Iron Rhine Arbitration Case: On the Right Legal Track?: An Analysis of the Award and of its Relation to the Law of the European Community', (2006) 18 *Hague Yearbook of International Law* 3; Lavranos, *supra* note 71; P. Weckel, 'Sentences du 24 Mai 2005, Chemin de fer du Rhin (Belgique/Pays-Bas)', (2005) 3 RGDIP 715.

77 Permanent Court of Arbitration Award Series, *The Eritrea–Yemen Arbitration Awards of 1998 and 1999* (2005).

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and that Yemen had sovereignty over a number of other islands over which it had frequently displayed authority in the years leading up to the arbitration.

In the second phase, each side proposed different median lines as the appropriate maritime boundary between the two states. The tribunal rejected the boundaries proposed by each party and determined, for the most part, that the appropriate maritime boundary was the equidistance line between the mainland coasts of the two states. In its analysis, the tribunal considered the relevance of petroleum agreements and concessions to the delimitation of the maritime boundary. The tribunal concluded that, while offshore petroleum contracts entered into by the two governments failed 'to establish or significantly strengthen the claims of either party to sovereignty over the disputed islands', they did, however, 'lend a measure of support to a median line between the opposite coasts of Eritrea and Yemen, drawn without regard to the islands, dividing the respective jurisdiction of the Parties'.[78]

During this second phase of the arbitration, a third state, Saudi Arabia, raised a concern with the Eritrea–Yemen tribunal, namely that the maritime jurisdictions of Yemen, Eritrea, and Saudi Arabia met at a point that had not been agreed upon by the three states. Saudi Arabia requested the tribunal to affirm in its award that its judgments would only bind Yemen and Eritrea and would in no way affect the rights and legal interests of Saudi Arabia. The tribunal accepted Saudi Arabia's request and stated in its award that it had neither the competence nor the authority to decide on any of the boundaries between either of the two parties and neighbouring states.[79]

In requiring the parties to inform and consult one another regarding any oil and gas discovered straddling their shared maritime boundary, the tribunal provided a framework for the parties to share and/or jointly use such resources. The tribunal's decision in respect of these petroleum contracts and concessions between the parties can be considered a valuable resource for international lawyers dealing with similar issues concerning resources straddling maritime boundaries. Furthermore, this case, 'one of the most significant international arbitrations of the end of the 20th century',[80] is expected to stand out in history as the arbitration that provided a solution to the problem of sovereignty over the southern islands of the Red Sea, which had been awaited 'since the end of the First World War'.[81]

2.2.3. The Eritrea–Ethiopia Boundary Commission and Claims Commission

Two of the most complex and interesting cases that have been brought to the PCA in recent years arise from the war between Eritrea and Ethiopia from May 1998 to June 2000 relating to their shared border. This conflict resulted in extensive loss of life and the displacement of more than one million people. Pursuant to a peace agreement reached in December 2000 in Algiers, the parties' boundary dispute was submitted to one arbitral tribunal, the Eritrea–Ethiopia Boundary Commission, and claims for

78 *Eritrea/Yemen* (Award of the Tribunal in the Second Stage (Maritime Delimitation), 17 December 1999, ibid., paras. 77 and 78.
79 Ibid., para. 136.
80 J.-P. Queneudec, 'The Eritrea–Yemen Arbitration: Its Contribution to International Law', in Permanent Court of Arbitration Award Series, *supra* note 76.
81 Ibid., at 2.

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violations of international law during the war were submitted to a second arbitral tribunal, the Eritrea–Ethiopia Claims Commission. The PCA serves as registry and provides administrative support to both commissions.

Prior to the establishment of the Claims Commission, it may be noted that there had been several historical instances of arbitration under PCA auspices of cases involving the laws of armed conflict, relating for example to the treatment of detainees, the laws of occupation, and the resort to force.[82] The Claims Commission has, to date, issued a total of 15 awards on the liability of each state for, among other things, the mistreatment of prisoners of war, the destruction and looting of property, and the injury and deaths of civilians during the armed conflict.[83] The Claims Commission is now seized with the damages phase of its work. The first round of hearings in the damages phase was held at the Peace Palace in April 2007; the second round was held there in May 2008.[84]

The Boundary Commission issued its Decision on Delimitation of the Border between Eritrea and Ethiopia (Delimitation Decision) on 13 April 2002,[85] and proceeded to the next phase of its mandate under the Algiers Agreement – demarcation of the border. However, after initial acceptance of the Delimitation Decision as final and binding by both parties, and involvement of both parties in the demarcation process, Ethiopia began insisting on changes that the Boundary Commission viewed as amounting to an attempt to reopen the substance of the Delimitation Decision.[86] After several years of attempts by the Boundary Commission to complete demarcation, and against the background of several Security Council resolutions calling on both parties to co-operate with the Commission, the Commission met in November 2006 at the seat of the PCA in order to 'consider how best to advance the

82 See, e.g., *Deserters of Casablanca*, France/Germany, Award of 22 May 1909; *Arrest and Restoration of Savarkar*, France/Great Britain, Award of 24 February 1911; *French Postal Vessel 'Manouba'*, Award of 6 May 1913; *Chevreau Claim*, United Kingdom/France, Award of 9 June 1931.

83 Eritrea–Ethiopia Claims Commission Partial Awards: *Prisoners of War: Eritrea's Claim 17* (1 July 2003), (2003) 42 ILM 1083; *Prisoners of War: Ethiopia's Claim 4* (1 July 2003), (2003) 42 ILM 1056; *Central Front: Eritrea's Claims 2, 4, 6, 7, 8 & 22* (28 April 2004), (2004) 43 ILM 1249; *Central Front: Ethiopia's Claim 2* (28 April 2004), (2004) 43 ILM 1275; *Civilians Claims: Eritrea's Claims 15, 16, 23 & 27–32* (17 December 2004), (2005) 44 ILM 601; *Ethiopia's Claim 5* (17 December 2004), (2005) 44 ILM 630; *Western Front, Aerial Bombardment & Related Claims: Eritrea's Claims 1, 3, 5, 9–13, 14, 21, 25 & 26* (19 December 2005), (2006) 45 ILM 396; *Western & Eastern Fronts: Ethiopia's Claims 1 & 3* (19 December 2005); *Diplomatic Claim: Eritrea's Claim 20* (19 December 2005); *Diplomatic Claim: Ethiopia's Claim 8* (19 December 2005), (2006) 45 ILM 621; *Loss of Property in Ethiopia Owned by Non-residents: Eritrea's Claim 24* (19 December 2005); *Economic Loss throughout Ethiopia: Ethiopia's Claim 7* (19 December 2005); *Jus Ad Bellum: Ethiopia's Claims 1–8* (19 December 2005), (2006) 45 ILM 430. Final Awards: *Pensions Claim: Eritrea's Claims 15, 19 & 23* (19 December 2005), (2006) 45 ILM 633; *Ports Claim: Ethiopia's Claim 6* (19 December 2005). A full set of the Claims Commission's Awards is available at http://www.pca-cpa.org.

84 For critical analysis see G. H. Aldrich, 'The Work of the Eritrea–Ethiopia Claims Commission', (2006) 6 *Yearbook of International Humanitarian Law* 435; C. Gray, 'The Eritrea/Ethiopia Claims Commission Oversteps its Boundaries: A Partial Award?', (2006) 17 (4) EJIL 699; R. P. Barnidge, 'The Eritrea–Ethiopia Claims Commission: Partial Awards, Central Front', (2005) 6 (1) *Griffin's View on International and Comparative Law* 12; N. Klein, 'State Responsibility for International Humanitarian Law Violations and the Work of the Eritrea Ethiopia Claims Commission So Far', (2005) 47 *German Yearbook of International Law* 214; J. I. A. Lichtenberg, 'Eritrea Ethiopia Claims Commission', (2004) 12 (3) *Tilburg Foreign Law Review* 266.

85 Decision on Delimitation of the Border between Eritrea and Ethiopia (13 April 2002), 41 ILM 1057 (2002); Eritrea–Ethiopia Boundary Commission, Observations, 42 ILM 1010 (2003) (hereinafter EEBC Observations). See http://www.pca-cpa.org for the full set of Decisions.

86 Cf. EEBC Observations, *supra* note 84.

demarcation'.[87] On 27 November 2006 the Commission issued a statement[88] setting out 'its approach to demarcation in light of the obstacles the parties had placed in its way'.[89] The Commission identified 'the location of points for the emplacement of pillars as a physical manifestation of the boundary on the ground' by means of precise co-ordinates.[90] The parties were given 12 months to reach agreement on the emplacement of pillars. If, by the end of 12 months, such agreement were not to have been reached nor sufficient progress made so as to enable the Commission to resume its activity, the Commission was to determine that 'the boundary [would] automatically stand as demarcated by the boundary points listed in the Annex [to the statement] and that the mandate of the Commission . . . be regarded as fulfilled'.[91]

Following a meeting with the parties at the PCA on 6 and 7 September 2007, the Boundary Commission concluded that no further progress could be made towards pillar emplacement on the ground. The parties were reminded that if before 30 November 2007 no progress were made with respect to the Commission's November 2006 statement, the Commission would formally promulgate a Decision establishing the line connecting the co-ordinates specified in the Commission's statement as the legally binding demarcated boundary between the two countries, thus fulfilling the mandate of the Boundary Commission to delimit and demarcate the boundary.[92]

3. Conclusions

Although the PCA has provided a standing venue for arbitration since 1899, there have been two distinct eras in which it has assumed a prominent role in the resolution of international disputes. In the first, which was the earlier part of the twentieth century, particularly following signature of the 1907 Convention, the PCA met an evident requirement for a readily available mechanism by which states could resolve disputes between themselves. In providing a standing forum for the resolution of disputes on a consensual basis, it facilitated the transition from the purely ad hoc arbitrations of previous centuries to the standing international tribunals that first came into existence with the Permanent Court of International Justice. It is only since the end of the last century, however, that, following a long period of relative

87 See 22nd Report of the Eritrea–Ethiopia Boundary Commission, Annex II, UN Doc. S/2007/33, 22 January 2007, available at http://www.pca-cpa.org.

88 Eritrea–Ethiopia Boundary Commission, Statement of 27 November 2006, available at http://www.pca-cpa.org (hereinafter EEBC Statement).

89 See UN Doc. S/2006/992, 15 December 2006, available at http://www.pca-cpa.org.

90 EEBC Statement, *supra* note 87, para. 20.

91 Ibid,, para. 22. See also Eritrea–Ethiopia Boundary Commission Press Release of 30 November 2007, available at http://www.pca-cpa.org.

92 See Eritrea–Ethiopia Boundary Commission, press release, 12 September 2007, available at http://www.pca-cpa.org. See further B. Simma and D.-E. Khan, 'Peaceful Settlement of Boundary Disputes under the Auspices of the Organisation of African Unity and the United Nations: The Case of the Frontier Dispute between Eritrea and Ethiopia', in N. Ando, E. McWhinney, and R. Wolfrum (eds.) *Liber Amicorum Judge Shigeru Oda* (2002), II, 1179; M. Kohen, 'The Decision on the Delimitation of the Eritrea/Ethiopia Boundary of 13 April 2002: A Singular Approach to International Law Applicable to Territorial Disputes', in M. Kohen (ed.), *Liber Amicorum Lucius Caflisch* (2007), 767; and M. Shaw, 'Title, Control, and Closure? The Experience of the Eritrea–Ethiopia Boundary Commission', (2007) 56 ICLQ 755.

inactivity, the advantages of PCA-administered arbitration have resulted in a large increase in the number of cases.

The second of these two eras, which commenced only at the end of the twentieth century, continues today. The international community increasingly recognizes the advantages of institutionally administered interstate and investor-state arbitration. The recent exponential growth in the number of cases administered by or under the auspices of the PCA clearly demonstrates this trend. At the time of writing, the PCA has a docket of 26 pending cases – a number unparalleled in its history – and, since the beginning of the year 2000, its membership has increased to 107 states. This increase in membership, of approximately 20 per cent in just the last seven years, reflects an evident need of the international community for such a standing forum and for a registry capable of administering disputes of the scale and complexity that arise between states, international organizations, and other international actors.

Today states have a variety of dispute resolution systems from which to choose. In this connection, it has even been argued that a 'market of sorts' has emerged.[93] There is also some truth in the contention that the international legal order, characterized as horizontal and decentralized, is currently in flux and that states have started to withdraw from certain dispute resolution systems. At a time when disputes are multiplying and becoming increasingly complex, the international community will be drawn to those mechanisms that can operate with a high degree of flexibility and are administered by experienced and highly responsive institutions. Such features seem to be increasingly important in today's ever-changing operating environment.

93 See, e.g., speech by Sands, *supra* note 23, at 6.

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