2024, Vol. 13, Issue 1

Dr hab. Marcin Czepelak

Secretary-General of the Permanent Court of Arbitration,
Jagiellonian University in Kraków

Dr Faadhil Adams

PCA Legal Counsel, University of Cape Town
ORCID 0000-0002-5661-9182

THE CONTRIBUTION OF THE PERMANENT COURT OF ARBITRATION TO THE DEVELOPMENT OF INTERNATIONAL LAW: CLAIMS COMMISSIONS, MIXED ARBITRATIONS & CONCILIATION

Abstract: The Permanent Court of Arbitration celebrates its 125th anniversary this year. The occasion marks an opportunity to reflect on the contributions of the Court to international law in general, and to less well-known institutions of international dispute resolution in particular. The article explores the contributions of the PCA to these institutions and remarks on the significance of PCA jurisprudence to their development. The article highlights the adaptive nature of the PCA to the ever-changing dispute resolution needs of the international community and posits that the PCA is well placed to continue its contribution to their further development in the future.

Keywords: Permanent Court of Arbitration; International Law; International Dispute Resolution

1. Introduction

This year the Permanent Court of Arbitration (the PCA) celebrates its 125th anniversary. The oldest international institution, created with the objective of peaceful settlement of international disputes headquartered in the Peace Palace in The Hague, is nowadays witnessing unprecedented

growth with a record breaking 82 new cases registered in 2023 and with 246 proceedings ongoing. The PCA has made a great effort to be truly universal by opening five international offices: in Buenos Aires, Hanoi, Mauritius, Singapore and Vienna.

Obviously, the 125 years of the PCA's history provide a great opportunity to reflect on this remarkable institution which remains one of the pillars of international conflict resolution.

One could for example go back to the roots of the PCA and look at it as one of the first building blocks of modern multilateralism. It was founded by the First (1899) and the Second (1907) Hague Peace Conferences, which were not, unlike the Congress of Vienna (1814-15) or the Congress of Berlin (1878), aiming at a reorganization of inter-state relations after a war, but rather an attempt at building a structure, which would assist states in preventing conflicts ensuring that they do not escalate and turn into hostilities. Accordingly, one could see that the main governing body of the PCA – the Administrative Council composed of the ambassadors of the Contracting Parties accredited to the Kingdom of the Netherlands, was a precursor to the Assembly of the League of Nations and the General Assembly of the United Nations.

One could equally focus on how the idea which led to the establishment of the PCA evolved and subsequently gave birth to the Permanent Court of International Justice (1920-1946) and finally the International Court of Justice (ICJ). Certainly, it would be worth exploring the various links between all these institutions seated in the Peace Palace and dedicated to the mission of 'Peace through Justice'.

Finally, it would be worth exploring how the PCA managed to survive 125 years tainted with turmoil, wars and conflicts, and not only remains fit for purpose, but also capable of adapting to the changing needs of international dispute settlement becoming one of the busiest international courts. However, this paper will not attempt to explore any of the abovementioned perspectives.

Instead, we will limit our brief analysis to how the PCA has contributed to the development of three institutions from the field of international conflict resolution: claims commissions (or mass claims processes), mixed-arbitrations and conciliation. None of them were invented by the PCA but each of them has, nevertheless, been developed by PCA practice to the extent that these institutions can now only be defined in light of PCA jurisprudence.

2. Mass Claims Processes

2.1. Early Experience

The PCA was initially headquartered in The Hague at Prinsegracht 71 in one of the typical mansion row houses built in the city center. However, thanks to the generous donation of Andrew Carnegie, the Peace Palace was built to function as the headquarters of the Court and to house a library of international law. The construction work started with the laying of the corner stone during the Second Hague Peace Conference in 1907. The construction took six years conlcluding only in 1913 at which point the Court finally moved in. By this time the PCA had already administrated 13 interstate arbitrations.

The very first PCA case deliberated in the Peace Palace, the *Portuguese Expropriated Religious Property* case, was actually a claims commission established in 1913 by *compromis* between Britain, France, Spain and Portugal. In the aftermath of the 5 October 1910 revolution which led to the fall of the Portuguese monarchy, Portugal limited the religious freedom of Catholics and confiscated religious properties, including those belonging to foreigners.[1] The procedure, based on the summary procedure of the 1907 Hague Convention on the Pacific Settlement of International Disputes, provides only for written submissions, although the Tribunal could request oral testimony, if necessary. In 1914 claims were to be brought by the respective governments on behalf of their nationals: 10 claims were brought by Great Britain, 24 by France and 23 by Spain. The procedure, interrupted by the outbreak of war, recommenced only in 1919 when Portugal finally submitted its defense. The Tribunal rendered its awards in 1920.

If we take a closer look at this relatively unknown case, we can identify all the elements which define mass claims processes and which pose problems that have been faced by other claims commissions.

Accordingly, the Max Plank Encyclopedia describes mass claims processes as typically referring to compensation sought

> when a large number of parties have suffered damages arising from the same diplomatic, historic, or other event. The tribunals, commissions and other

1 Hamilton and Requena et al, *The Permanent Court of Arbitration: International Arbitration and Dispute Resolution: Summaries of Awards, Settlement Agreements and Reports*, 103 -105.

> mechanisms created to resolve disputes in such circumstances have come to be called "mass claims processes". Many, but not all, involve one or more State Parties. They have been formed and have functioned in a variety of ways, sometimes borrowing concepts and procedures from each other, but often inventing unique solutions in light of particular legal and practical perspectives.[2]

The definition indicates the difficulties with defining mass claims processes.[3] They are a form of dispute resolution that is of a quasi-judicial nature, sometimes referred to as 'tribunals' and at other times referred to as 'commissions'.[4] They frequently arise from peace treaties ending wars or in agreements to solve diplomatic crises, or in other instances they have been used to right historical wrongs. The nature of these processes has necessitated innovation in the procedure used to deal with them. From the perspective of a secretariat, it is the sheer volume of material that is placed before such commissions that requires effective administrative support in both the management and the design of such processes.[5]

Indeed, if we look back at the case of *Portuguese Expropriated Religious Property*, we see, that despite the *compromis* expressly providing for the individual assessment of claims, the British and French governments agreed with Portugal that the tribunal render a single award covering all claims on the basis of a total lump sum which had been negotiated bilaterally.

2 Holtzmann, "Mass Claims", par 1.

3 See also the definition in Sima and Ortgies, "The Iran-United States Claims Tribunal", 76, where they are defined as an institution; created ad hoc; by more than one state, acting directly or through an international organization; to resolve by means of a quasi-judicial administrative process; in a standardized and simplified manner; while nevertheless observing basic due process rules; a multitude of claims for the compensation of damages; arising from or in the context of an internationally wrongful act, e.g. in the context of a war or a mass atrocity; the claims in question or the facts that they are based on already existed at the time of the creation of the institution; the docket of the commission is limited in material and temporal scope, e.g. to a single event or period in time, and no future claims may be dealt with; providing compensation or restitution of property is a primary function and objective of the commission; the funds for compensation are ideally already at the disposal of the commission from the outset and the total amount of such pre-paid funds may limit the overall compensation available; the decision of the commission on an individual claim has *res judicata* effect; the jurisdiction of the commission is exclusive.

4 Holtzmann, "Foreword", v.

5 Pulkowski and Falls, "The Role of Secretariats", 200.

An element of decision often present in modern mass claims processes.[6] Since Spain had not reached such a deal, the tribunal assessed each of its claims separately dismissing them for failing to establish the claimants' nationality in the way prescribed by the Spanish *Codigo Civil*.

2.2. Modern Era

Even though mass claims processes were more commonly used in earlier periods, there was a decline in their use following World War II. After World War II, lump sum settlement agreements were resorted to when a large number of nationals, of one state, had claims against another state.[7] From the 1980s onwards, with the advent of the Iran-United States Claims Tribunal (IUSCT), modern forms of the mass claims processes began to emerge.[8]

The IUSCT was established as a means to peacefully resolve the crisis that erupted between the United States and Iran in 1979. The negotiations between Iran and the US resulted in the Algiers Accords of 19 January 1981 from which the IUSCT was born. The IUSCT adopted the UNCITRAL Rules of 1976 as its procedure. This carved out a place for the PCA through the designation, by the Secretary-General of the PCA, of an appointing authority. The IUSCT was the first Tribunal to make use of the PCA in this role.[9] The PCA housed and provided registry services to the Tribunal in its early stages and hearings continued to be held at the Peace Palace until September 2003.[10] The Secretary-General of the PCA still maintains the role of designating the appointing authority for the IUSCT.[11]

The PCA's contribution to the Eritrea-Ethiopia Claims Commission (EECC) was of a more sustained nature, with the PCA serving as registry for close to a decade. The EECC was established pursuant to the termination

6 Some of the well-known arbitrations, of the (modern) historical era, had elements of mixed arbitrations and mass claims. The often-cited mixed arbitration commission stemming from the peace treaty between the United Kingdom and the United States, commonly referred to as the Jay Treaty (1794), awarded more than 500 awards in claims related to the seizure of maritime vessels. See Holtzmann, "Mass Claims", para. 5.

7 Holtzmann, "Mass Claims", para. 7.

8 Holtzmann, ibidem, para. 8.

9 van den Hout, "Introduction", xxvii.

10 van den Hout, ibidem, xxvii. See also the quotation from Belland, "The Iran-United States Claims Tribunal: Some Reflections on Trying a Claim", 238, where he states '[t]he first claims of the IUSCT were filed at a counter set up in the anteroom of the PCA hearing room under the Jasper loving cup presented to the World Court by Tsar Nicholas II'.

11 Articles 6-8 of IUSCT, Tribunal Rules of Procedure 3 May 1983.

of hostilities between Ethiopia and Eritrea which resulted in the Algiers Agreement concluded in December 2000.[12] The Algiers Agreement made provision for the establishment of a Boundary Commission in terms of Article 4 and a Claims Commission in terms of Article 5. The Rules of Procedure for the Commission were based on the Permanent Court of Arbitration Optional Rules for Arbitration Disputes between Two States.[13] In its role as registry to the EECC, the International Bureau, conducted research for the Commission and provided administrative and logistical support which was extensive. The PCA catalogued and archived documents, facilitated communications, and maintained the commission's docket while also arranging hearings and conferences in the Peace Palace.[14]

One of the other major contributions to this form of dispute resolution comes through the PCA aiding the development of mass claims processes by gathering and disseminating information concerning them as well as acting as a repository for many of the most important mass claims that have taken place over the last five decades.[15] The PCA's early interest in mass claims processes is reflected through the fact that the first publication of the Peace Palace Paper Series was devoted to 'Institutional and Procedural Aspects of Mass Claims Settlement Systems'. At the Centennial Celebration of the PCA in May 1999, Howard Holtzmann, speaking on the emergence of mass claims processes, suggested that the PCA convene a meeting of individuals who had participated in claims commissions either as arbitrators, administrators or counsel. This suggestion was followed up on by the PCA Secretary-General at the time, Tjaco van den Hout. A Steering Committee on Mass Claims Processes was commissioned under the auspices of the PCA. The project culminated in a volume which was described as comprising a 'unique comparative survey and analysis of the issues that the establishment and functioning of international mass claims commissions engender.'[16] The volume was

12 See the Algiers Agreement signed on 12 December 2000 available at https://pca-cpa.org/en/cases/71/.

13 See the EECC, Rules of Procedure (adopted 1 October 2001) Article 18, available at https://pca-cpa.org/en/cases/71/; see also the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes Between Two States (1992) available at https://docs.pca-cpa.org/2016/01/Optional-Rules-for-Arbitrating-Disputes-between-Two-States_1992.pdf.

14 Pulkowski and Falls, ibidem, 209. See further Holtzmann and Kristjánsdóttir, *International Mass Claims Processes: Legal and Practical Perspectives*, 308.

15 See the Mass Claims Processes on the PCA website, available at https://pca-cpa.org/en/services/arbitration-services/mass-claims-processes/.

16 Schwebel, "Foreword", vi.

published as *International Mass Claims Processes: Legal and Practical Perspectives* in 2007.[17]

2.3. Future

The numerous conflicts currently taking place around the world are likely to give rise to historical events from which mass claims processes have traditionally arisen. Whilst negotiating the legal framework for the future mass claims process, States may wish to benefit once more from the PCA's unparalleled experience in this field along with its neutrality and independence. Considering that mass claims processes are closely related to international stability – aiding and understanding them is a fitting task for the PCA.[18]

Equally, the possibility that mass claims may also arise from environmental law disputes would also appear to be on the increase. One aspect of the work undertaken by the F4 panel of the United Nations Claims Commission (UCC) in the aftermath of Iraq's invasion of Kuwait was compensation relating to mass claims arising from oil pollution and oil well fires.[19] The possibility of activities in one state causing environmental harm in another state through for example the pollution of international watercourses, the movement of air pollution across boundaries or pollution to an adjacent marine environment are likely avenues for mass claims in the future.[20] The PCA has considered environmental disputes as early as 2001 and possesses the expertise and capacity to assist with the resolution of mass claims that may arise from these types of disputes.[21]

17 Holtzmann and Kristjánsdóttir, *International Mass Claims Processes: Legal and Practical Perspectives*.

18 Holtzmann, "Foreward", v.

19 Klein, "Claims Comissions and the Resolution of International Environmental Law Disputes", 310.

20 Klein, ibidem, 312.

21 See the PCA Optional Rules for Arbitration and Conciliation (2001) available at https://docs.pca-cpa.org/2016/01/Optional-Rules-for-Arbitration-of-Disputes-Relating-to-the-Environment-and_or-Natural-Resources.pdf.

3. Mixed Arbitrations

3.1. Early Experience

Mixed arbitrations can be defined as arbitrations that take place between states and private parties, international organizations or between states and political entities.[22] From its beginning, the PCA has been fulfilling its mandate with regard to inter-state disputes.[23] Private claims only appeared in the PCA's practice later, however, from the inception of the PCA, they were among the considerations which obligatory arbitration could be used to resolve.[24] The changing needs of the international community necessitated adaptation to forms of dispute resolution that went beyond purely inter-state disputes. This can still be seen in the work of the PCA today.

The mandate of the PCA to administer mixed arbitrations stems from Article 47 of the 1907 Hague Convention stating:

> The Bureau is authorized to place its offices and staff at the disposal of the Contracting 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-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal.

Interpretation of this provision proved critical, in 1935, when the International Bureau received a request, from the tribunal in the *Radio Corporation of America v China* case,[25] to use the PCA's facilities.[26]

22 Schofield, "The Permanent Court of Arbitration: From 1899 to the Present", 374; see also Crawford, "The Permanent Court of Arbitration and Mixed Arbitration", 1. For a record of *The Government of Sudan / The Sudan People's Liberation Movement/Army*, PCA Case No. 2008-07, 22 July 2009 (Abyei Arbitration), involving a political entity, see https://pca-cpa.org/en/cases/92/.

23 Article 1 of both the 1899 and 1907 Hague Conventions on the Pacific Settlement of International Disputes.

24 Schofield, ibidem, 374. At the 1899 Hague Conference, Russia proposed first and foremost for arbitration to be used for 'disputes relating to pecuniary damages suffered by a state, or its nationals, as a consequence of illegal actions or negligence on the part of another state or its nationals' should be resolved by way of obligatory arbitration.

25 *Radio Corporation of America v China*, PCA Case No. 1934-01, 12 April 1935 *available at* https://pca-cpa.org/en/cases/16/.

26 Crawford, ibidem, 2.

The accession request was accommodated by a broad interpretation of the meaning of the term 'special board of arbitration'.[27] This laid the path, in 1962, to the adoption of the PCA's first Rules of Arbitration and Conciliation for the Settlement of International Disputes Involving One State Party.[28]

3.2. Modern Era

Investment arbitrations form a core part of the PCA's casework. The success of mixed arbitration, at the PCA in recent years, can be seen in the PCA case docket. The PCA has administered 222 mixed arbitration cases under bilateral and multilateral investment treaties and national investment laws, or contracts between states, state entities, and private parties over the previous 10 years.[29] The PCA has contributed to the development of jurisprudence on investment arbitration through many of the important cases that it has administered.[30]

Mixed arbitrations would include disputes involving political entities within a state. In this regard, the PCA was called on to administer arbitral proceedings in a dispute between the Government of Sudan and the Sudanese People's Liberation Movement/Army in the *Abyei Arbitration*. The jurisdictional novelty of the dispute, in terms of the nature of the parties involved, were particularly suited to the PCA. Another notable feature of the *Abyei Arbitration* was that it was totally transparent.[31] The oral pleadings were made public through live streaming.[32] Public access to the *Abyei Arbitration* raised awareness and allowed for the engagement of the international community with the peace process. It also allowed

27 The decision was explained in the PCA's annual report in 1934 and confirmed by the Administrative Council of the PCA in 1935, according to the Conseil *Administratif de la Cour Permanente D'Arbitrage, Annuaire*, 1 April 1935.

28 Schofield, ibidem, 376.

29 See the PCA Annual Report 2023, 23 at https://docs.pca-cpa.org/2024/06/0bd839f2-pca-annual-report-2023.pdf.

30 See for instance the *Channel Tunnel Group Limited (Private entity) v. The Secretary of State for Transport of the Government of the United Kingdom of Great Britain and Northern Ireland (State)*, PCA Case No. 2003-06, 30 January 2007 (*Eurotunnel Arbitration),* (https://pca-cpa.org/en/cases/70/); *Saluka Investments B.V. v. Czech Republic,* PCA Case No. 2001-04, 17 March 2006 (https://pca-cpa.org/en/cases/101/); *Yukos Universal Limited (Isle of Man) v. The Russian* Federation, PCA Case No. 2005-04, 18 July 2014 (https://pca-cpa.org/en/cases/61/).

31 Baetans and Yotova, "The Abyei Arbitration: A Model Procedure for Intra-State Dispute Settlement in Resource-Rich Conflict Areas?", 417, 434.

32 See the *Abyei Arbitration* on the PCA website https://pca-cpa.org/en/cases/92/.

the PCA to contribute to the development and education on dispute resolution, highlighting the use of mixed arbitrations. The academic discussion on the case bears testament to this.[33]

3.3. Future

The future of mixed arbitrations, at the PCA, is in many ways related to its flexible mechanism for jurisdictional arrangements. Non-state actors, such as international organizations and NGOs play a key role in international affairs even though avenues to hold the former responsible and to assist the latter are lacking. [34] The PCA is able to fill this lacuna.[35]

In the rapidly expanding area of Environmental, Social and Governance (ESG) issues, NGOs 'play a vital role'.[36] In the absence of an environmental court with mandatory jurisdiction, the PCA has, in previous years, been cited as the 'competent judicial institution' for the settlement of environmental disputes.[37] Demonstrating its availability to administer the resolution of these disputes, the PCA adopted the Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment in 2001. The PCA has administered several environment related disputes and has been cited in various multilateral environmental frameworks.[38]

33 See for instance: Crook, "Abyei Arbitration – Final Award", 15; Miles and Mallett, "The Abyei Arbitration and the Use of Arbitration to Resolve Inter-state and Intra-state Conflicts", 313; Daly "The Abyei Arbitration: Procedural Aspects of an Intra-State Border Arbitration", 801; Born and Raviv, "The Abyei Arbitration and the Rule of Law", 177.

34 The International Court of Justice, for instance, can only exercise jurisdiction over states, see Article 35(1) of the Statute of the International Court of Justice which provides that the court shall be open to the State parties to the Statute. See further https://www.icj-cij.org/advisory-jurisdiction#:~:text=Since%20States%20alone%20are%20entitled,organizations%20and%20to%20them%20alone.

35 Organizations such as the UN, Regional Organizations such as the European Union and African Union, as well as divisions of these organizations would all constitute international organizations. See further Crawford, ibidem, 3.

36 Rest, "An International Court for the Environment: The Role of the Permanent Court of Arbitration", 53.

37 See the Resolution of the George Washington University Law School Conference on the International Resolution of Environmental Disputes April 17, 1999, at Annex III, p. 241 of the *Permanent Court of Arbitration Centennial Papers*. See further Rest, ibidem, 64. See also the ICEF Project available at https://www.icef-court.org/wp-content/uploads/2023/07/ICEF-Project-a-brief-overview.pdf which refers to the PCA.

38 See Environmental Dispute Resolution at the PCA available at https://pca-cpa.org/en/services/arbitration-services/environmental-dispute-resolution/.

On the social aspect of ESG, specifically in Business and Human Rights, the PCA has also contributed its dispute resolution expertise.[39] Disputes of this nature often also involve international bodies and NGOs. In 2017, for instance, the PCA administered two arbitral cases under the Bangladesh Accord on Fire and Safety which were brought by two international unions against two global fashion brands.[40] The growth of ESG-related activities in recent years will inevitably lead to disputes.[41] The PCA remains one of the most effective forums to deal with these disputes from both the perspective of investment arbitration and arbitration involving non-state actors.

4. Conciliation

4.1. Early Experience

An all-encompassing definition of conciliation has not been agreed upon by scholars.[42] There are, however, elements that they hold in common. Conciliation is considered a form of dispute resolution which usually involves a third party in the form of a commission. The commission investigates all aspects of the dispute and proposes a solution in the form of a non-binding report.[43] Conciliation functions in a similar way to both fact-finding inquiries and mediation. Although the ambit of a conciliatory commission would

39 Levine and Wahid, "Business and Human Rights: A New Frontier for International Arbitration", 1.

40 The accords were signed in 2013 after the collapse of a factory in Bangladesh which led to the death of 1,000 people and the injury of 3,000 more. See the PCA Press Release https://pcacases.com/web/sendAttach/2238.

41 On 8 January 2024, Bloomberg International reported that global ESG assets are on track to surpass $40 trillion (US) by 2030 the report is available https://www.bloomberg.com/company/press/global-esg-assets-predicted-to-hit-40-trillion-by-2030-despite-challenging-environment-forecasts-bloomberg-intelligence/#:~:text=London%2C%208%20January%202024%20%E2%80%93%20Global,from%20Bloomberg%20Intelligence%20(BI). The exponential growth is a strong indication that this is an area in which many future disputes will arise.

42 See for instance the definition by the *Institute de Droit International* on International Conciliation (1961), at Article 1, which states that: 'conciliation means a method for the settlement of international disputes of any nature according to which a Commission set up by the Parties, either on a permanent basis or on an ad hoc basis to deal with a dispute, proceeds to the impartial examination of the dispute and attempts to define the terms of a settlement susceptible of being accepted by them, or of affording the Parties, with a view to its settlement, such aid as they may have requested'.

43 Koopmans, "The PCA in the field of conciliation and mediation: new perspectives and approaches", 68.

be more extensive not merely setting out the facts of the dispute but also proposing a solution mutually acceptable to the parties.

The PCA's use of Conciliation, to resolve disputes between parties, has a historical context that can be traced back to the inception of the PCA itself. That the PCA's founders had taken an all-encompassing view on dispute resolution is encapsulated in the Hague Conventions of 1899 and 1907 on the Pacific Settlement of Disputes (the founding conventions).[44] Although conciliation is not specifically referred to in these Conventions, the Conventions do make provision for inquiry and mediation.[45] The PCA, *Dogger Bank* inquiry,[46] in 1904, which involved an early form of a commission of inquiry, based on the founding conventions, is considered the precursor to modern iterations of conciliation.[47] Although formally considered a commission of inquiry, in terms of the 1899 Convention, it functioned like a conciliation commission considering questions of fact and law as well as taking into account diplomatic considerations.[48] In 1937, the PCA's Administrative council adopted a resolution incorporating conciliation within the scope of the PCA's activities. After the adoption of the resolution the PCA supported three conciliation commissions involving Denmark and Lithuania, France and Switzerland, and Greece and Italy.[49]

44 The Hague Conventions on the Pacific Settlement of International Disputes of 1899 and 1907.

45 Both The Hague Conventions at Articles 2-8 consider Good Offices and Mediation, and at Articles 9-36 consider Commissions of Inquiry.

46 The International Commission of Inquiry between Great Britain and Russia arising out of the North Sea incident available at https://pca-cpa.org/en/cases/317/. The Commission is referred to in the British parliament in 1906 available at https://hansard.parliament.uk/Commons/1906-11-12/debates/33161c5d-e8ca-4b45-8526-71abf160b107/TheDoggerBankInquiryAndCommissionArbitration.

47 Koopmans, "Diplomatic Dispute Settlement: The Use of Inter-State Conciliation", 77. Also see the background paper of the Working Conference on Conciliation (2017), National University of Singapore available at https://cil.nus.edu.sg/wp-content/uploads/2017/10/Conciliation-Background-Paper-1.pdf.

48 Koopmans, "Diplomatic Dispute Settlement: The Use of Inter-State Conciliation", 78. There is an overlap between conciliation and mediation and fact-finding commissions. The PCA Optional Conciliation Rules acknowledges see the Permanent Court of Arbitration Optional Conciliation Rules (1996) at the *Scope of Application* available at https://docs.pca-cpa.org/2016/01/Permanent-Court-of-Arbitration-Optional-Conciliation-Rules.pdf.

49 See the PCA website https://pca-cpa.org/international-conciliation-and-mediation-at-the-pca/.

4.2. Modern Era

Building on its early experience, the PCA issued its Optional Conciliation Rules in 1996. The Conciliation Rules are flexible in their operation with the primary goal being the reaching of an amicable settlement.[50] They provide a framework for the setting up and operation of a conciliation commission. The Conciliation Rules allow the Secretary-General to assist with the selection of conciliators.[51] The International Bureau offers its resources and facilities to any two or more parties who use the PCA's Conciliation Rules or potentially the rules of any organization.

With this unparalleled experience, the PCA was perfectly positioned to administer and support the *Timor-Sea Conciliation*. This case clearly demonstrated the benefits of conciliation in resolving complicated disputes expediently. One of the key advantages of conciliation, showcased in these proceedings, was the efficiency with which the Conciliation Commission was able to successfully resolve the dispute between the parties.[52] The Commission was constituted in less than three months on 25 June 2016, and a challenge to its competence was dealt with in three months thereafter. On 6 March 2018, the parties had signed the treaty resolving the dispute, and on 9 May 2018, the Commission concluded the Conciliation proceedings and issued its report. The dispute had been resolved in less than two years. Commenting on the *Timor Sea Conciliation*, Professor Lucy Reed opined that part of the success of the conciliation might have to do with the commitment of resources by the PCA. She stated that the commitment of two senior legal counsel (current Deputy-Secretary Generals, Garth Schofield and Martin Doe) on a full-time basis played a role in its successful conclusion.[53]

An important aspect of the conciliation in *Timor Sea*,[54] which also merits attention, is the public access to the proceedings.[55] The public nature

50 See the Permanent Court of Arbitration Optional Conciliation Rules (1996) at the *Scope of Application* available at https://docs.pca-cpa.org/2016/01/Permanent-Court-of-Arbitration-Optional-Conciliation-Rules.pdf.

51 Article 4, para. 3 and Article 8.

52 See the PCA Press Release https://pcacases.com/web/sendAttach/2358.

53 See CIL Working Conference on Conciliation, National University of Singapore, (17-18 January 2017) 4, at https://cil.nus.edu.sg/wp-content/uploads/2017/10/Conciliation-Conference-Report-Final-1.pdf.

54 *Timor-Leste v. Australia*, PCA Case No. 2016-10, 9 May 2018 available at https://pca-cpa.org/en/cases/132/.

55 The opening session of the conciliation was live streamed and there were regular updates in the form of press releases made available by the PCA, see https://pca-cpa.org/en/cases/132/.

of the proceedings, in the form of live streaming, regular press releases and access to procedural documents, facilitated by the PCA, can be considered as contributing to the development and education on conciliation. Professor Lucy Reed, in fact, suggested that 'arbitration could learn something from this particular conciliation'.[56]

4.3. Future

Today, there are many bilateral and multilateral treaties that mention conciliation as one of the methods for settlement of disputes arising under them.[57] There is often no specification, in these treaties, on the procedure to be followed or how issues are to be decided. The PCA is well placed to assist with these issues. Environmental disputes, for example, are a growing area of disputes. The Paris Agreement 2015 makes provision for conciliation. The PCA, in 2002 already adopted the PCA Optional Rules for Conciliation of Disputes Relating to Natural Resources and/or the Environment.[58] Sarah Grimmer suggested that the PCA can provide support to conciliations as the members of the court of the PCA can draw on their extensive experience to propose potential conciliators.[59] This would include specialist conciliators with a background in environmental law. It is the accessibility of the PCA to adapt to changing circumstances and forms of dispute resolution that remains one of its greatest assets. This was noted, 24 years ago, at the PCA's centenary celebrations by Sven Koopmans who stated: 'it is this accessibility

56 See CIL Working Conference on Conciliation, National University of Singapore, (17-18 January 2017) p. 4, ae at https://cil.nus.edu.sg/wp-content/uploads/2017/10/Conciliation-Conference-Report-Final-1.pdf. The Timor-Sea Conciliation is discussed in numerous academic articles see for instance, Laidlaw and Phan, "Inter-state compulsory conciliation procedures and the maritime boundary dispute between Timor-Leste and Australia" and Tamada, "The Timor Sea Conciliation: the unique mechanism of dispute settlement".

57 Koopmans, "The PCA in the field of conciliation and mediation: new perspectives and approaches", 71.

58 These rules are available at https://docs.pca-cpa.org/2016/01/Optional-Rules-for-Conciliation-of-Disputes-Relating-to-the-Environment-and_or-Natural-Resources.pdf. See also the comments by the former Secretary-General of the PCA, H.E. Hugo Siblesz, at the United Nations Framework Convention on Climate Change 21st Conference of the Parties High Level Segment (7-8 December 2015), available at https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/cop21cmp11_hls_speech_pca.pdf.

59 See CIL Working Conference on Conciliation, National University of Singapore, (17-18 January 2017) p. 10, available at https://cil.nus.edu.sg/wp-content/uploads/2017/10/Conciliation-Conference-Report-Final-1.pdf.

of the PCA that provides new perspectives for conciliation and that should catch the attention of the international community.'[60]

5. Conclusion

The 125 years of the PCA represents a long chapter in the history of international law. Throughout this time the PCA steadily and importantly contributed to its development. The three institutions analysed in this paper were present in PCA practice since its early beginnings and have been gradually evolving in the modern era. Neither mass claims processes, nor mixed arbitrations, nor conciliation would be what they are today without the PCA's caselaw. Indeed, the PCA contributed to the development of international law with immense jurisprudence stemming from more than 700 cases decided over 125 years. In conclusion we can paraphrase the words of Professor Merrills written 15 years ago already, where he states that without the PCA, 'not only might a number of troubling disputes have remained unresolved, but international law as a whole would be much poorer'.[61]

Bibliography

1. Algiers Agreement signed on 12 December 2000 available at https://pca-cpa.org/en/cases/71/.
2. Baetans, Freya and Yotova, Rumiana. "The Abyei Arbitration: A Model Procedure for Intra-State Dispute Settlement in Resource-Rich Conflict Areas?" *Goettingen Journal of International Law* (2011), Volume 3, No. 1: 417-446.
3. Belland, Stanton. "The Iran-United States Claims Tribunal: Some Reflections on Trying a Claim." *Journal of International Arbitration* (1984), No. 1: 237-253.
4. Born, Gary and Adam, Raviv. "The Abyei Arbitration and the Rule of Law." *Harvard International Law Journal* (2017), Volume 58, No.1: 177-224.
5. *Channel Tunnel Group Limited (Private entity) v. The Secretary of State for Transport of the Government of the United Kingdom of Great Britain and Northern Ireland (State)*, PCA Case No. 2003-06, 30 January 2007 (*Eurotunnel Arbitration)* (https://pca-cpa.org/en/cases/70/).
6. Centre for International Law (CIL) Working Conference on Conciliation, National University of Singapore, (17-18 January 2017) available at https://cil.nus.edu.sg/wp-content/uploads/2017/10/Conciliation-Conference-Report-Final-1.pdf.

60 Koopmans, "The PCA in the field of conciliation and mediation: new perspectives and approaches", 69.

61 Merrills, "The Contribution of the Permanent Court of Arbitration to International Law, 1999–2009", 38.

7. Conventions on the Pacific Settlement of International Disputes of 1899 and 1907.
8. Crawford, James. "The Permanent Court of Arbitration and Mixed Arbitration." Remarks of Professor James Crawford on the occasion of the of a Celebration of the Centenary of the PCA, The Hague, 18 October 2007, 1-6, available at https://docs.pca-cpa.org/2016/01/Reflections-on-the-Current-Relevance-of-the-PCA-Presentation-by-Professor-James-Crawford-SC.pdf.
9. Crook, John. "Abyei Arbitration – Final Award." *American Society of International Law Insights* (2009),No. 13.
10. Daly, Brooks. "The Abyei Arbitration: Procedural Aspects of an Intra-State Border Arbitration." *Leiden Journal of International Law* (2010), No. 23: 801-823.
11. Hamilton, P.; Requena, H.; van Scheltinga, L.; Shifman, B. (editors). *The Permanent Court of Arbitration: International Arbitration and Dispute Resolution: Summaries of Awards, Settlement Agreements and Reports*. The Hague: Kluwer Law International, 1999.
12. Holtzmann, Howard. "Mass Claims." *Max Plank Encyclopedia of International Law*. https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1891?prd=OPIL.
13. Holtzmann, Howard. "Foreword". In *Redressing Injustices Through Mass Claims Processes* edited by The International Bureau of the Permanent Court of Arbitration, v-vi. Oxford: Oxford University Press, 2006.
14. Holtzmann, Howard and Kristjánsdóttir, Edda (editors). *International Mass Claims Processes: Legal and Practical Perspectives*. Oxford: Oxford University Press, 2007.
15. Iran United States Claims Tribunal, Rules of Procedure, 3 May 1983, available at https://iusct.com/wp-content/uploads/2018/10/5-TRIBUNAL-RULES-OF-PROCEDURE.pdf.
16. *Institute de Droit International* on International Conciliation (1961).
17. Klein, Natalie. "Claims Comissions and the Resolution of International Environmental Law Disputes." In *Research Handbook on International Claims Commissions* edited by Giorgetti, Chiara; Pearsall Patrick and Ruiz-Fabriz Hélène, 309-329. Cheltenham: Edward Elgar, 2023.
18. Koopmans, Sven. "The PCA in the field of conciliation and mediation: new perspectives and approaches." In *The Permanent Court of Arbitration Centennial Papers* edited by The International Bureau of the Permanent Court of Arbitration, 67-74. The Hague: Kluwer Law International, 2000.
19. Koopmans, Sven. *Diplomatic Dispute Settlement: The Use of Inter-State Conciliation*. The Hague: T.M.C Asser Press, 2008.
20. Laidlaw, Anais and Phan, Hao. "Inter-state compulsory conciliation procedures and the maritime boundary dispute between Timor-Leste and Australia." *Journal of International Dispute Settlement* (2019), No. 10: 126-159.
21. Levine, Judith and Wahid, Kasphee "Business and Human Rights: A New Frontier for International Arbitration." *Transnational Dispute Management* (2018), No. 1.
22. PCA Optional Rules for Arbitrating Disputes Between Two States (1992) available at https://docs.pca-cpa.org/2016/01/Optional-Rules-for-Arbitrating-Disputes-between-Two-States_1992.pdf.

23. PCA Optional Conciliation Rules acknowledges see the Permanent Court of Arbitration Optional Conciliation Rules (1996) at the *Scope of Application* available at https://docs.pca-cpa.org/2016/01/Permanent-Court-of-Arbitration-Optional-Conciliation-Rules.pdf.
24. PCA Optional Rules for Arbitration and Conciliation (2001) available at https://docs.pca-cpa.org/2016/01/Optional-Rules-for-Arbitration-of-Disputes-Relating-to-the-Environment-and_or-Natural-Resources.pdf.
25. PCA Annual Report 2023 at https://docs.pca-cpa.org/2024/06/obd839f2-pca-annual-report-2023.pdf.
26. Merrills, John. "The Contribution of the Permanent Court of Arbitration to International Law, 1999–2009." In *The Permanent Court of Arbitration: International Arbitration and Dispute Resolution - Summaries of Awards, Settlement Agreements and Reports* edited by Macmahon, Belinda and Smith, Fedelma. The Hague: T.M.C. Asser Press, 2010.
27. Miles, Wendy and Mallett, Daisy. "The Abyei Arbitration and the Use of Arbitration to Resolve Inter-state and Intra-state Conflicts." *Journal of International Dispute Settlement* (2010), No.1: 313-340.
28. Pulkowski, Dirk and Falls, Scott. "The Role of Secretariats." In *Research Handbook on International Claims Commissions* edited by Giorgetti, Chiara; Pearsall, Patrick and Ruiz-Fabriz, Hélène, 75 – 89. Cheltenham: Edward Elgar, 2023.
29. *Saluka Investments B.V. v. Czech Republic,* PCA Case No. 2001-04, 17 March 2006 (https://pca-cpa.org/en/cases/101/).
30. Schofield, Garth. "The Permanent Court of Arbitration: From 1899 to the Present." In *The Cambridge Companion to International Arbitration*, edited by Chin Len Lim, 349-388. Cambridge: Cambridge University Press, 2021.
31. Schwebel, Stephen. "Foreword." In *International Mass Claims Processes: Legal and Practical Perspectives,* edited by Howard Holtzmann and Edda Kristjánsdóttir *International Mass Claims Processes: Legal and Practical Perspectives,* vi. New York: Oxford University Press, 2007.
32. Sima, Bruno and Ortgies, Jan. "The Iran-United States Claims Tribunal." In *Research Handbook on International Claims Commissions* edited by Giorgetti, Chiara Pearsall, Patrick and Ruiz-Fabriz, Hélène, 7-89. Cheltenham: Edward Elgar, 2023.
33. *Radio Corporation of America v China,* PCA Case No. 1934-01, 12 April 1935 *available at* https://pca-cpa.org/en/cases/16/.
34. Rest, Alfred. "An International Court for the Environment: The Role of the Permanent Court of Arbitration." In *The Permanent Court of Arbitration Centennial Papers* edited by The International Bureau of the Permanent Court of Arbitration, 53-65. The Hague: Kluwer Law International, 2000.
35. Tamada, Dai. "The Timor Sea Conciliation: the unique mechanism of dispute settlement." *European Journal of International Law* (2020), No. 31; 321-344.
36. *Timor-Leste v. Australia,* PCA Case No. 2016-10, 9 May 2018 available at https://pca-cpa.org/en/cases/132/.
37. *The Government of Sudan / The Sudan People's Liberation Movement/Army*, PCA Case No. 2008-07, 22 July 2009 available at https://pca-cpa.org/en/cases/92/.

38. van den Hout, Tjaco. “Introduction.” In *Redressing Injustices Through Mass Claims Processes*, edited by The International Bureau of the Permanent Court of Arbitration, xxvii-xxxiii. Oxford: Oxford University Press, 2006.
39. *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, PCA Case No. 2005-04, 18 July 2014 (https://pca-cpa.org/en/cases/61/).