I have been asked to speak about the role of the Permanent Court of Arbitration—the PCA—in creating a propitious climate for business relations between the Netherlands and the Russian Federation. I will begin with a short introduction to the PCA and its historic ties with both countries, and then proceed to describe those of its activities which are of relevance to the economic relations between the two countries.

A Dutch-Russian seminar is a fitting occasion given the essential—and indeed, unparalleled—role that Russia and the Netherlands have played in the establishment and shaping of the PCA.

The PCA was a product of the First Hague Peace Conference of 1899, which was convened by Czar Nicholas II of Russia in the hope of halting the arms race between the great powers of the day and “with the object of seeking the most effective means of ensuring to all peoples the benefits of real and durable peace.” It is the Czar and his advisors, notably Friedrich von Martens, who selected The Hague as the most suitable—perhaps the most neutral—venue for the Conference. Russia and the Netherlands were among the 26 original signatories of the 1899 Convention for the Pacific Settlement of International Disputes, the principal result of the Peace Conference. That document refers to arbitration as “the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.” The Convention also created the PCA as a permanent institution that would assist arbitral tribunals constituted to hear specific cases. The Netherlands showed their support for the new institution by donating the monies for the purchase of the grounds on which the Peace Palace, which would house the PCA, was to be built.

While the PCA’s seat is in The Hague, it is important to note that it is not a Dutch organization. Contrary to most arbitral institutions, which are commercial enterprises, the PCA is an

---

1 These remarks are adapted for publication from those delivered at the Dutch-Russian seminar “Better Justice, Better Business,” which took place at the LitéraireSocietàit de Witte in The Hague on March 6, 2013.
intergovernmental organization which today comprises 115 Member States. All of these, including the Netherlands and Russia, are represented on the PCA’s Administrative Council, the body which directs the policies of the institution.

Both the Netherlands and Russia were active users of the PCA’s services in its early years. From 1900 to 1902, Russia was involved in the very first case to be administered by the PCA—the Whaling Claims arbitration, which dealt with Russia’s detention of American ships on charges of illegal fishing. In the years leading up to the First World War, the Netherlands and Russia each initiated one arbitration under PCA auspices, respectively concerning boundary delimitation and compensation for injuries to aliens.

How, then, is the PCA, an institution created more than 100 years ago at the initiative of Russia with the support of the Netherlands to pursue the lofty ideal of world peace, relevant to today’s business relations between the Netherlands and the Russian Federation?

While the PCA was originally intended to facilitate inter-state arbitration, in the 1930s, the PCA’s Administrative Council expanded its mandate to encompass the administration of so-called “mixed” arbitrations, that is, arbitrations between public and private entities. Presently, precisely these “mixed” arbitrations represent the bulk of the PCA’s workload. Given its intergovernmental mandate, the PCA only administers arbitrations where at least one of the parties is a State, State entity or international organization. By allowing private entities to directly institute arbitral proceedings against a State, the international legal system has “depoliticized” the underlying conflicts. In the past, private entities had to rely on their State of nationality to take up their case on the basis of “diplomatic protection,” and sometimes through “gunboat diplomacy.”

As of today, the PCA is administering a record number of 72 cases, of which 48 are investor-State arbitrations arising under bilateral or multilateral investment treaties or, in a few cases, under national investment statutes or investment agreements between investors and host States, 18 are arbitrations

---

2 United States Department of State, Foreign relations for the United States 1902. Whaling and sealing claims against Russia, Appendix 1, <digicoll.library.wisc.edu/cgi-bin/FRUS/FRUS-idx?id=FRUS.FRUS1902ap1> (accessed February 27, 2013). Although this case was not technically a case under the 1899 Hague Convention, which had not entered into force when the agreement to arbitrate was concluded, it was administered by the International Bureau of the PCA. See Shabtai Rosenne, The Hague Peace Conferences of 1899 and 1907 and International Arbitration, 2001, at p. xxviii.

3 Russian Claim for Indemnities, Russia/Turkey, 1910, 11 R.I.A.A 241; Dutch–Portuguese Boundaries on the Island of Timor, The Netherlands/Portugal, 1913, 11 R.I.A.A 481.

arising under contracts involving at least one State or State entity and 5 are classical inter-State arbitrations (for example, the *Kishenganga Indus Waters Arbitration*, Pakistan v. India, Partial Award of February 18, 2013).

In all arbitrations that involve both private parties and States or State entities, international arbitration provides an alternative to recourse to the local courts of the State that is, directly or indirectly, a party to the dispute. If a private party could only submit disputes to the national courts of the opposing party, it might perceive a fundamental imbalance between itself and its opponent, for example because it would probably lack familiarity with the judicial system of the State party, or because the State party might be perceived to be in a position to exert undue influence over its national courts.

The availability of international arbitration can alleviate these concerns by separating the dispute resolution process from the involved State party. Specifically, arbitration allows the parties to select their decision-makers, as well as a seat of arbitration, as appropriate outside the involved State. Additionally, the parties will have the chance to ensure that the arbitrators possess the exact legal and technical expertise necessary for the resolution of that specific case. Moreover, the dispute may require the application of legal rules other than those of the State party to the dispute.

Arbitration being based on the consent of the parties, increasing its availability depends on choices by the States and private parties involved. Arbitration clauses may be inserted in investment agreements and commercial contracts between private enterprises and States, as well as in international investment treaties. BITs in particular may allow States not only to attract foreign investors but also to achieve guarantees for their own nationals investing abroad. The Russian Federation and the Netherlands are parties to a BIT that dates back to 1989, the Netherlands having been one of the first States with which the Soviet Union concluded a treaty of this type. Russian investors in the Netherlands can therefore have recourse to international arbitration in certain conflicts involving the Netherlands as the host country (and vice versa).

In drafting dispute resolution clauses, parties face important procedural choices. For instance, most BITs offer a menu of arbitration options, most commonly the World Bank’s International Centre for the Settlement of Investment Disputes—the ICSID, the Stockholm Chamber of Commerce, or ad hoc arbitration under arbitration rules of the United Nations Commission on International Trade Law—the UNCITRAL. This is where familiarity with the Permanent Court of Arbitration becomes important.
The PCA administers nearly 90% of all UNCITRAL investor-state arbitrations. This is particularly relevant in the context of the Russian Federation, which is not a party to the ICSID Convention. In contrast, both Russia and the Netherlands have entered into BITs with third countries providing for arbitration under the UNCITRAL Rules. Under these treaties, the PCA is currently administering two arbitrations commenced by Russian claimants and two by Dutch claimants.

The PCA provides services through its International Bureau, which is composed of an experienced legal and administrative staff of diverse geographical origins. The International Bureau provides general secretarial assistance as well as technical and logistical support for meetings and hearings. In cases conducted under PCA auspices, the parties have access to free use of hearing and meeting rooms at the Peace Palace in The Hague and at some other venues in different parts of the world.

Arbitrators and other participants in PCA proceedings on Dutch soil enjoy various privileges and immunities under the PCA’s Headquarters Agreement with the Netherlands. As an example, witnesses participating in PCA proceedings can be accorded immunity from legal process in respect of acts or convictions prior to entry into the Netherlands, upon issuance by the PCA of a document certifying that their presence is required.

In recent years, the PCA has obtained similar advantages under a number of Host Country Agreements concluded with States such as Argentina, Costa Rica, Lebanon, Mauritius, South Africa, India, Chile and most recently Singapore.

Finally, in addition to the International Bureau’s role as registry and secretariat in inter-state and “mixed” arbitrations, under the UNCITRAL Rules the Secretary-General of the PCA is entrusted with designating appointing authorities, either for the appointment of an arbitrator to the tribunal or to decide a challenge against an arbitrator. The Secretary-General may also be requested by the parties to act directly as appointing authority. The PCA fulfills this function not only in cases involving States and State entities, but also in purely commercial arbitrations between private parties. As of today, the PCA has handled 539 appointing authority cases.

Although the PCA has provided a standing venue for arbitration for over a century, there have been two distinct periods during which it has taken a key role in the resolution of international disputes. In

---

5 Eg the Russia–Italy, Russia–United States, Netherlands–Venezuela, Netherlands–Costa Rica BITs.
6 Costa Rica, Mauritius, and Singapore.
the earlier part of the twentieth century, the PCA met an evident need for a readily available mechanism by which States could resolve disputes between them. In providing a standing forum for the resolution of disputes on a consensual basis, it reflected a transition from the purely *ad hoc* arbitrations of the nineteenth century. Russia and the Netherlands were instrumental in bringing about this change.

In the second era of the PCA’s development, which began in the 1990s and is ongoing, disputes between States and non-State actors have formed and will form an increasing part of the PCA’s caseload. Its founding fathers have endowed the PCA with a considerable amount of flexibility, allowing it to modernize along with the times and expand into new areas of international dispute resolution. In this process, the PCA hopes to benefit from the continuing support of the Netherlands and Russia.