I have been asked to present you with an overview of the contribution of the Permanent Court of Arbitration—or PCA—to the reputation of The Hague as the International City of Peace and Justice. The location could hardly be more fitting to broach this topic, as it can be said with little exaggeration that the PCA would not have come into existence were it not for the vision of Czar Nicolas II of Russia.

The Permanent Court of Arbitration is the world’s oldest intergovernmental institution devoted to the peaceful settlement of disputes. Less notorious than some of its neighbors and inactive for a long time in the XXth century, it has recently reemerged as a vital organization.

Like for many other institutions housed in The Hague, the very idea behind the PCA’s creation is premised on the ideal of furthering peace through justice—that is, through binding dispute resolution based on law. This was the stated intent of Nicholas II when he convened the First Peace Conference in 1899. It was the Czar’s advisor, Frédéric de Martens (or as he was perhaps known among Russians “Fiedia”), who proposed The Hague as the venue for the Conference. A second Peace Conference was held, again in The Hague, in 1907.

The main result of the Peace Conferences was the conclusion of the 1899 and 1907 Conventions for the Pacific Settlement of International Disputes, which established the PCA. The Peace Conferences became known as landmark gatherings, which in time favoured the creation of the League of Nations, and ultimately, the United Nations and its principal judicial organ, the
International Court of Justice. Today, there are 115 States Parties to the Peace Conventions and Member States to the PCA.

I will come back to the idea behind the Permanent Court of Arbitration shortly, but I will first explain the PCA’s function, as it has been the source of much confusion in the past: despite its title, the Permanent Court of Arbitration is “not a court in the conventional understanding of that term.”¹ Rather, it is “an administrative organization with the object of having permanent and readily available means to serve as the registry for purposes of international arbitration and other related procedures […].”²

By way of reminder, arbitration is a voluntary mode of dispute settlement, in other words, it entirely depends on the parties’ consent. “Arbitration” and “judicial settlement” share some key characteristics: decisions of both international arbitral tribunals and international courts are binding on the parties and cannot be appealed.³

Via its International Bureau, the PCA assists arbitral tribunals in cases where at least one party is a State, a State entity or an intergovernmental organization. These can be classified in two main categories: State-to-State disputes; and disputes between States and private parties arising out of international agreements for the protection of investments, or commercial contracts. The International Bureau provides general secretarial assistance as well as technical and logistical support for meetings and hearings. In this connection, The Hague presents certain advantages as a venue. In cases administered under PCA auspices, the parties have access to free use of hearing and meeting rooms at the Peace Palace in The Hague. Moreover, participants in PCA proceedings on Dutch soil enjoy various privileges and immunities under the PCA’s Headquarters Agreement with the Netherlands.⁴

For example, witnesses participating in PCA proceedings can be accorded immunity from legal

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² Ibid.
³ The PCA’s founding conventions state 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,” Hague Conventions for the Pacific Settlement of International Disputes of 1899 and 1907, arts. XV and XXXVII(1), respectively. The Conventions add that recourse to arbitration “implies an engagement to submit in good faith to the award,” arts. XVIII and XXXVII(2), respectively. And, finally, they state that an award of an arbitral tribunal “puts an end to the dispute definitely without appeal,” arts. LIV and LXXXI, respectively. Similarly, the Statute of the International Court of Justice provides that a judgment of that Court is “final and without appeal,” 39 AJIL Supp. 215 (1945), art. 59.
⁴ See Agreement concerning the Headquarters of the Permanent Court of Arbitration, March 30, 1999, in force August 8, 2000, art 3(1).
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.\(^5\)

Since 1976, the PCA has also fulfilled the important function of aiding in the constitution of arbitral tribunals, conferred upon it by the United Nations Commission on International Trade Law.

As can be seen from this overview of the PCA’s functions, its vocation to further “peace and justice” is principally fulfilled by the facilitation of dispute resolution through arbitration.

It is worth thinking back to the beginnings of the PCA. Back in 1899, the Peace Conventions defined arbitration as “the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.” However, not everyone saw arbitration with a favourable eye. On the one hand, there was disappointment, on the part of Russia among others, with the inability of the delegations at the Peace Conferences to agree on general compulsory jurisdiction for the PCA.\(^6\) On the other hand, there was skepticism as to the potential of arbitral tribunals created on an \textit{ad hoc} basis to contribute to the coherent development of international law.\(^7\)

Today, however, we are witnessing an unprecedented momentum of arbitration as a means of dispute resolution in all arbitral institutions. The PCA in particular is currently experiencing the highest level of dispute settlement activity in its over 110-year history.\(^8\)

Arbitration’s most direct contributions to peace and justice may be those cases in which an agreement to arbitrate a dispute has helped eliminate or prevent armed conflict. In this connection, one may recall the arbitration agreements which led to the \textit{Eritrea/Yemen} arbitration, the \textit{Eritrea/Ethiopia Claims Commission}, the maritime boundary delimitation in \textit{Guyana v. Suriname}. Most recently, the flexibility of arbitration has proven it a suitable mechanism to play a role in cases

\(^5\) Exchange of Notes constituting an Agreement supplementing the Agreement concerning the Headquarters of the Permanent Court of Arbitration, June 6, 2012, Art. 1.


\(^7\) See e.g., Statement by Joseph Choate, Proceedings of the Hague Peace Conferences, Conference of 1907, Vol. II, 595 (“The present [institution] has not gone far in the direction of establishing and developing international law. Each case is isolated, lacking both continuity and connection with the other.”); Frederick W. Holls, The Peace Conference at The Hague (Macmillan Press, 1914), 330-332 (discussing areas of disappointment among certain Conference participants); and, P.H. Kooijmans, International Arbitration in Historical Perspective: Past and Present, in International Arbitration: Past and Prospects (A.H.A. Soons, ed.), (Martinus Nijhoff, 1990), 23 (quoting T.M.C. Asser: “Instead of a Permanent Court, the Convention of 1899 only created the phantom of a Court, an impalpable ghost, or, to speak more plainly, it created a clerk’s office with a list.”).

\(^8\) Presently, the PCA is administering 76 arbitrations, of which 6 are state-to-state.
of armed conflict internal to a State, as in the case of the PCA-administered *Abyei Arbitration*, which opposed the Government of Sudan and the Sudan People’s Liberation Movement or Army. In that case, the tribunal’s award was a necessary step of the peace process between the Parties.

While the PCA continues its activities in cases between sovereign States, the greatest demand it has faced in recent years has been in cases brought directly against States by foreign investors under bilateral and multilateral agreements for the protection of investments. By allowing private entities to institute arbitral proceedings against a State, the international legal system has “depoliticized” the underlying conflicts. Whereas in the past private entities had to rely on their State of nationality to take up their case on the basis of diplomatic protection, not to mention by “gunboat diplomacy,” or submit their grievances to the courts of the host State, they now have access to a neutral dispute resolution mechanism. This guarantee encourages economic development via the promotion of international investment, but is also linked to the promotion of inter-State relations and peace: it prevents the escalation of investment conflicts to the inter-State level. It also serves the rule of law, by stimulating good governance within the host State and by developing and applying international law principles.

Finally, discrediting the naysayers of the early twentieth century, arbitral tribunals have contributed to the development of international jurisprudence, both articulating and applying key principles of international law. The *Island of Palmas* case, an arbitration between the Netherlands and the United States from 1928, is a well-known example, often quoted for its now “classical dictum” on continuous and peaceful display of sovereignty over land. Inevitably, arbitral tribunals have also drawn on principles developed by international courts in The Hague; to take an example, the *Eritrea-Ethiopia Claims Commission* made use of the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia in applying the Geneva Conventions of 1949.

These have been the contours of the fulfillment of the mandate given to the PCA in 1899, namely, the furtherance of the pacific settlement of international disputes. The flexibility of this mandate has permitted the PCA’s involvement in various types of arbitrations and thus, a multifaceted contribution to the pursuit of peace through justice in The Hague.

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