“Now there are three Ways whereby Misunderstandings among Princes may be accommodated without a War.

[...] The first is by a Conference ...  

[...] The second way to prevent War between those, who, not belonging to the same Jurisdiction, have no common Judge to appeal to, is to put the Matter to Arbitration ... 

[...] The third Way to prevent War is to determine Differences by casting Lots ...”

—Hugo Grotius, *The Law of War and Peace* (1625)
Historic Arbitrations: **Jay Treaty Arbitrations**  
(United States v. Great Britain)  
1794

- Initiated by agreement (Jay Treaty)
- Outstanding issues from the U.S. War of Independence
- Three mixed commissions:
  - North-eastern boundary with Canada;
  - Pre-revolution private debts;
  - Treatment of U.S. vessel “Neptune” by Britain

Historic Arbitrations: **Alabama Claims**  
(United States v. United Kingdom)  
1871

- Initiated by special agreement
- Claims relating to Confederate commerce raiders outfitted in England
- Five-member tribunal (with Italy, Switzerland, and Brazil making appointments)
- Arbitration agreement specifies the applicable legal principles
- U.S. secondary claims of over $2 billion
- UK held responsible for $15.5 million
Historic Trends: Inter-State Arbitrations (1801-1900)

The Results of the Hague Conference

- 1899 Hague Conference adopts the Convention on the Pacific Settlement of Disputes

**Article 16**

“With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times.”

Arbitration between States
Dirk Pulkowski, PCA Legal Counsel
1899 Hague Convention

**Article 19**
Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present Act or later, new Agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

**Article 31**
The Powers who have recourse to arbitration sign a special Act ('Compromis'), in which the subject of the difference is clearly defined, as well as the extent of the Arbitrators’ powers. This Act implies the undertaking of the parties to submit loyally to the Award.

Principal Bases for Jurisdiction in Contemporary PCA Proceedings

- Arbitration clauses in bilateral or multilateral treaties
  - UNCLOS
  - OSPAR Convention
  - Bilateral Investment Treaties
  - Indus Waters Treaty

- Ad hoc agreements to arbitrate

- PCA has established itself as a natural “home” for arbitrations between States – States agree to PCA registry support even when the arbitration clause does not specifically refer to the PCA
Article 287 – Choice of procedure

3. A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII.

[ ]

5. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.”

Ireland v. UK (“Mox Plant”) (commenced 2001) - Pollution control
Malaysia v. Singapore (commenced 2003) - Land reclamation
Barbados v. Trinidad & Tobago (commenced 2004) - Maritime delimitation
Guyana v. Suriname (commenced 2004) - Maritime delimitation
Argentina v. Ghana (commenced 2012) - Detention of Argentine navy vessel
Bangladesh v. India (pending) - Maritime delimitation
Mauritius v. United Kingdom (pending) - Environmental protection
Philippines v. China (pending) - “Maritime jurisdiction of the Philippines”
Arbitration between States
Dirk Pulkowski, PCA Legal Counsel
Example of Bilateral Treaty:
Indus Waters Kishenganga (Pakistan v. India)

ANNEXURE G—COURT OF ARBITRATION
(ARTICLE IX(5))

1. If the necessity arises to establish a Court of Arbitration under the provisions of Article IX, the provisions of this Annexure shall apply.

2. The arbitration proceeding may be instituted
   (a) by the two Parties entering into a special agreement (compromise) specifying the issues in dispute, the composition of the Court and instructions to the Court concerning its procedures and any other matters agreed upon between the Parties; or
   (b) at the request of either Party to the other in accordance with the provisions of Article IX(5)(b) or (c).

Such request shall contain a statement setting forth the nature of the dispute or claim to be submitted to arbitration, the nature of the relief sought and the names of the arbitrators appointed under Paragraph 6 by the Party instituting the proceeding.
Example of ad hoc Arbitration Agreement: “Iron Rhine” (Belgium v. Netherlands)

The Kingdom of Belgium and the Kingdom of the Netherlands have agreed to submit the dispute concerning the reactivation of the Iron Rhine to an arbitral tribunal they are to set up under the auspices of the Permanent Court of Arbitration in The Hague, by requesting a binding decision on the following jointly formulated statement of questions:

“Belgium and the Netherlands agree that Belgium has the right to use, restore, adapt and modernise the Dutch section of the historical route of the Iron Rhine, for the benefit of all Belgian and other rail operators that comply with the rules for access to the market.

With a view to the future investments in the Iron Rhine the two Parties have decided to submit the following questions to an arbitral tribunal under the auspices of the Permanent Court of Arbitration in The Hague:

Example of ad hoc Arbitration Agreement: Croatia/Slovenia
Article 3: Task of the Arbitral Tribunal

(1) The Arbitral Tribunal shall determine

(a) the course of the maritime and land boundary between the Republic of Slovenia and the Republic of Croatia;

(b) Slovenia's junction to the High Sea;

(c) the regime for the use of the relevant maritime areas. [...]