The Permanent Court of Arbitration: Responding to a Century of Globalization

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Introduction

The history of the 100-year-old Permanent Court of Arbitration (PCA) is a micro-cosm of a century of globalization, and its evolution during that period testifies to its ability to meet the changing needs of an increasingly globalized international community. Particularly in the past decades, the PCA has evidenced great flexibility in meeting the dispute resolution needs of the international community in such emerging and expanding fields as telecommunications, air traffic control, mass claims settlement, international organizations and the environment. It has also become involved in global dialogue and the dissemination of information, by electronic as well as traditional means, on a variety of current topics in international law and relations.

Non-State Parties

The PCA was born at the first Hague Peace Conference of 1899, itself a watershed in the globalization of international relations.¹ For the first two decades of its existence, the PCA remained faithful to its original mandate, administering exclusively inter-State arbitrations.² In the mid-1930s, it was given its first opportunity to demonstrate its ability to respond to the changing needs of the international community, by agreeing to administer a “mixed” arbitration, in which one of the parties was a foreign corporation, rather than a State.³ In 1960, the Administrative Council, relying on this precedent, responded to the increasing

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interaction between States and non-State parties, such as multinational corporations, by authorizing the International Bureau to elaborate procedural rules for the resolution of these types of disputes. The PCA “Rules of Arbitration and Conciliation for settlement of international disputes between two parties of which only one is a State” were completed in February 1962.

Decolonization and Emergence of New States

In the period following the Second World War, the PCA fell into relative disuse, probably for a variety of reasons, including disillusionment resulting from the failure of international law and institutions to prevent two World Wars, and waning confidence in third-party settlement mechanisms in general. Another significant factor was the political climate created by the emergence of a large number of “new” States, which had not participated in the 1899 and 1907 Hague Conferences or in the making of international law generally. In 1960, in response to this globalization of the world order, the PCA invited all Member States of the United Nations to accede to the Hague Conventions. Since then, similar invitations have been extended on a regular basis to all States that are not yet parties to either Convention. There are, at present, ninety-one State parties.

International Commercial Arbitration and the UNCITRAL Arbitration Rules

In 1976, the PCA was launched directly into the field of international commercial arbitration, with the adoption of a set of arbitration rules by the United Nations Commission for International Trade Law (UNCITRAL). These Rules authorize the Secretary-General of the PCA, upon request of a party to the arbitration, to designate an “appointing authority,” who is responsible for appointing arbitrators and ruling on challenges to arbitrators.

The increase, in recent years, in the number of such requests to the Secretary-General (an average of one every two weeks in 1999) is evidence of the expansion of global commerce. The parties to these arbitrations originate in all parts of the world, as do the institutions and persons who are ultimately designated as appointing authorities. The Secretary-General’s visibility in performing this function has also led, with increasing frequency, to his being directly designated by parties as the

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5 See UNCITRAL Arbitration Rules, supra note 4, arts. 7-9.