



Concept Note: Congress of the Members of the Court and Draft Resolution on the Occasion of the 125th Anniversary of the Permanent Court of Arbitration (1899-2024)

17 April 2024

I. INTRODUCTION AND BACKGROUND

1. Established in 1899 at the First Hague Peace Conference, the Permanent Court of Arbitration (“PCA”) will mark 125 years in July 2024. Few organizations survive for so long. Fewer still remain fit for purpose in an era of human endeavour so dramatically different from that in which they were created. It is a testament to the foresight of the PCA’s founders, to the flexible mandate given to the organization, and to the commitment of its Contracting Parties that the PCA not only endures, but is more active today than at any point in its long history.
2. Founded at the very dawn of the modern era of international organization and modern multilateralism, the PCA has witnessed a great deal. It has seen the rise and fall of the League of Nations, decolonization and the emergence of a much larger community of States, and the establishment and growth of the United Nations. And despite the high hopes of the peace movement of the late 19th century, the PCA has lived through two world wars, innumerable local and regional conflicts, and a long cold war—a record of turmoil and challenge that may appear particularly acute at the present moment.
3. Within the field of dispute resolution, the PCA has seen the development and standardization of arbitration procedure, the establishment of other international courts and tribunals, a growing interest in conciliation and non-binding forms of dispute settlement, and the dramatic change of the place of the individual and of private actors in international law. The PCA, adapting throughout its history to the changing dispute resolution needs of the international community, has evolved into a modern international dispute settlement institution with one of the heaviest caseloads out of all international courts, registering in 2023 alone 82 new registry cases, supporting at least 219 cases, and handling 49 requests relating to its appointing authority functions.
4. Neither the PCA’s survival nor its present contributions to the settlement of international disputes have been automatic. The high level of activity now at the PCA is largely a product of efforts and processes put in motion in the 1990s in the run up to the PCA’s centenary in 1999. It reflects the commitment of the PCA’s Contracting Parties and of many dedicated individuals to adapt the PCA to the dispute resolution needs of the international community in the 21st century.
5. It is with this experience in mind that the Administrative Council has mandated the International Bureau to organize a Congress of the Members of the Court on the occasion of the upcoming 125th anniversary, to be held on 12 to 14 June 2024 (the “Congress”). The Congress will serve as a vital platform for the Court to harness the wealth of expertise, experience, and insights of its Members. These individuals, prominent in the international legal and dispute resolution community, have a keen understanding of the needs and challenges faced by the Contracting Parties and are attuned to developments in the international landscape. Their participation in the Congress offers a crucial resource for strategically charting the organization’s future. Bringing

together the PCA's organs, the Congress will be a strategic forum to talk about the future of the PCA, its contributions to international law, and how it can better serve the evolving dispute resolution needs of the Contracting Parties.

6. Such a strategic gathering during an important milestone is not without precedent. The PCA's centenary was the culmination of a dialogue among the PCA's Contracting Parties and leading actors in international disputes resolution which laid out a roadmap for the active use of the institution in a modern context. The activities included a similar gathering of the Members of the Court. Much of the PCA's present activity and success reflects the implementation of a plan laid out in 1999 and initiatives begun in and around the centenary. The upcoming 125th anniversary is thus an opportunity for a similar stocktaking through a Congress that can be employed as an occasion for serious engagement, for consideration of how the PCA's successes of the last 25 years can be consolidated and sustained, and for identifying steps that either the PCA or its Contracting Parties could take to better position the organization for the unfinished task of peacefully settling international disputes.

II. THE CONGRESS OF THE MEMBERS OF THE COURT

7. The PCA's Members of the Court represent an enormous body of experience and expertise in international law and dispute resolution. They include current and former high government officials, prominent scholars and academics, and experienced counsel and arbitrators. Their unifying characteristic is the confidence and high regard in which they are held by the Contracting Parties that have appointed them.
8. The Members of the Court have convened on only two previous occasions (in 1993 and 1999). Like the first two meetings, the International Bureau envisages this third Congress as an occasion for dialogue: both to present the work of the PCA to the international community and for active discussion within an eminent group of individuals who would not otherwise come together. This third Congress would come at the end of the most active quarter-century of activity of the PCA, and right after a record year of growth in its docket. Reuniting for the first time since 1999, the Members of the Court will have a unique opportunity to reflect on the evolution of the institution and on its future, at a time where the availability of peaceful dispute resolution mechanisms is ever more relevant.
9. As in previous editions, the Congress will be invited to discuss topics relating to the PCA's Founding Conventions and to the current and future practice of the PCA. An initial programme for the Congress has been prepared with the support of the Special Working Group. The Congress will thus be a key forum to discuss how the PCA can fit into the architecture of international organizations and what steps should be taken by the Members of the Court to support the PCA's evolution. As foreshadowed by the side event held at the UN International Law Week in October 2023, one topic of particular relevance will be inter-State conciliation, which accommodates diplomacy even after formal resort to a dispute resolution mechanism. Another, exemplified by the recent adoption of the UNCITRAL Expedited Arbitration Rules carving out a role for the PCA, will be the continued development of the PCA's efforts relating to expedited and summary procedures. UNCITRAL is currently also actively discussing the reform of the architecture for investor-State dispute settlement, including potential roles for the PCA in new instruments for the resolution of such economic disputes.

10. Beyond the products of the discussions themselves, the Members of the Court, individually or as a national group, are invited to submit papers on the topics above which will be collected for publication as a tangible outcome of the Congress. The Congress papers (and their eventual translation into various languages) will provide a material contribution of interest for the international legal community and showcase the commitment of the Contracting Parties and Members of the Court to the furtherance of international law and peaceful dispute resolution.

III. PROPOSED DRAFT RESOLUTION(S) OF THE MEMBERS OF THE COURT

11. Apart from the Congress papers, and consistent with the overarching objectives of the event, the International Bureau has prepared a Draft Resolution proposed to be adopted by the Members of the Court in June 2024. The Draft Resolution follows a tradition observed in previous meetings of the Members of the Court, where the body adopted resolutions¹ that encapsulate their collective aspirations and recommendations for the future of the organization. The Draft Resolution is also inspired by resolutions adopted by the Administrative Council in the occasion of the centenary and 125th anniversary of the PCA, as well as Resolution A/RES/77/322 of the United Nations General Assembly commemorating the 125th anniversary of the PCA.
12. In September 1993, the International Bureau of the PCA convened the first Conference of the Members of the Court. The Conference, attended by some 140 participants from 52 countries, was organized in the context of the United Nations Decade of International Law, to elicit from distinguished legal experts their views or suggestions for enhancement of the PCA's role and in preparation of the centenary of the First Hague Peace Conference in 1999. The Conference concluded that a Steering Committee should be appointed to advise the Administrative Council and the International Bureau with respect to the development and application of dispute settlement methods and possible revision of the Founding Conventions.²
13. Beginning in 1994, the broadly-based Steering Committee, composed of experts in international law and dispute resolution from a variety of legal cultures, met five times over three years to produce its Final Report dated June 1997. The Final Report contained, *inter alia*, their recommendations on the revision of the Founding Conventions and improvement of the PCA's dispute settlement mechanisms, as well as proposed resolution whose text can be considered for inclusion in various documents that may result from activities to be held in 1999.³
14. In its 160th Meeting held on 8 April 1999, the Administrative Council, in the occasion of the PCA centenary, adopted a Centennial Resolution⁴ which, *inter alia*, recognized the need to improve awareness of the valuable contributions of the PCA in the resolution of international disputes; strongly endorsed the efforts of the International Bureau to encourage universal membership;

¹ See Resolution I and Resolution II of the Conference of Members of the Permanent Court of Arbitration on 10 and 11 September 1993.

² See Resolution II of the Conference of Members of the Permanent Court of Arbitration on 10 and 11 September 1993.

³ See Appendix 3 of the Final Report and Recommendations to the Administrative Council of the 1999 Steering Committee of the Permanent Court of Arbitration, June 1997.

⁴ See Centennial Resolution adopted by the Administrative Council of the Permanent Court of Arbitration on 8 April 1999, appended to the Minutes of the 160th Meeting of the Administrative Council of the Permanent Court of Arbitration on 8 April 1999.

resolved to use every effort to foster closer cooperation between the PCA and the United Nations; and urged the International Bureau to continue its efforts to adapt the PCA to contemporary and future challenges through its Rules and Optional Protocols.⁵

15. On 17 May 1999, the Second Conference of the Members of the PCA met on the occasion of the centenary celebration of the PCA. The event was attended by Her Majesty Queen Beatrix of The Netherlands and United Nations Secretary-General Kofi Annan. The latter addressed the Conference with opening remarks. With Sir Ninian Stephen presiding, other speakers were Mr. Yin Yubiao, Judge Ahmed S. El-Koshery, Prof. Francisco Orrego Vicuña, Mr. Christopher Pinto and Judge Howard Holtzmann.
16. In its 209th Meeting held on 19 April 2023, the Administrative Council passed a Resolution on the upcoming 125th anniversary of the PCA which, *inter alia*, created a Special Working Group composed of volunteer Members of the Administrative Council for proposing meaningful and cost-effective commemorative activities, and empowered the International Bureau to create a volunteer Special Panel of Experts—in the same spirit as the Steering Committee—to assess the workings of the PCA with recommendations towards the future, for the appreciation and reference of the Administrative Council.⁶
17. On 1 August 2023, the United Nations General Assembly adopted Resolution A/RES/77/322 which, *inter alia*, welcomed the 125th anniversary of the PCA; encouraged Member States to make use of its services in arbitration, conciliation, mediation, commissions of inquiry, and other peaceful means of dispute resolution; and encouraged Member States that have not yet done so to accede to the Conventions for the Pacific Settlement of International Disputes of 1899 and 1907.⁷
18. The Draft Resolution of the Members of the Court, which will be drafted through a collaborative process amongst the Members facilitated by the International Bureau, is intended to follow in the spirit of these resolutions and express the unified vision and commitment of its Members to the enduring principles and objectives of the PCA. Copies of these resolutions and other relevant historic documents will be uploaded in the Congress website for the use and reference of the Members of the Court.

⁵ See Centennial Resolution adopted by the Administrative Council of the Permanent Court of Arbitration on 8 April 1999, appended to the Minutes of the 160th Meeting of the Administrative Council of the Permanent Court of Arbitration on 8 April 1999.

⁶ See Resolution CA417403 adopted at the 209th Meeting of the Administrative Council of the Permanent Court of Arbitration on 19 April 2023.

⁷ See United Nations General Assembly Resolution A/RES/77/322 of 3 August 2023