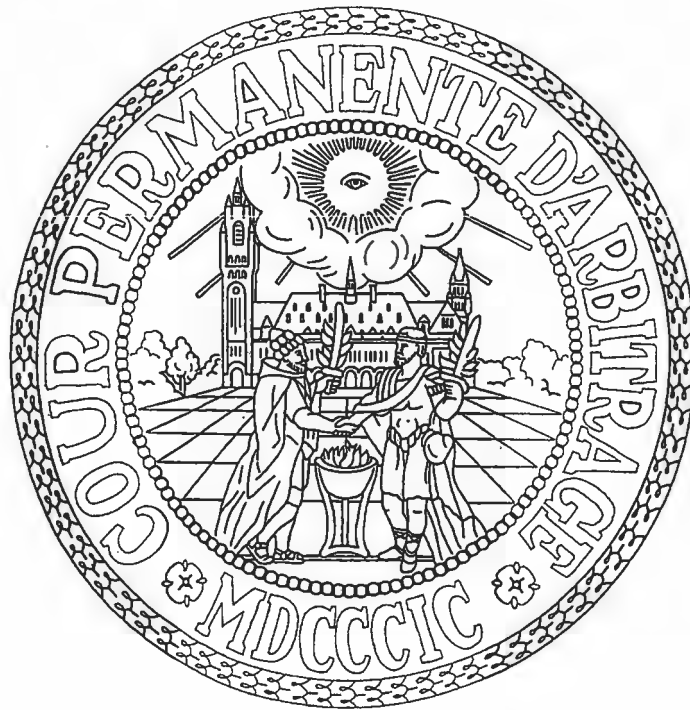


PERMANENT COURT
OF
ARBITRATION



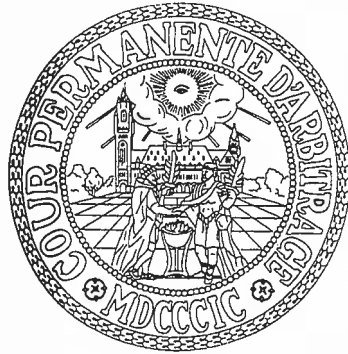
1999 STEERING COMMITTEE

FINAL REPORT

AND
RECOMMENDATIONS TO THE
ADMINISTRATIVE COUNCIL

JUNE 1997

PERMANENT COURT
OF
ARBITRATION



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PERMANENT COURT OF ARBITRATION
1999 STEERING COMMITTEE
Final Report

Table of Contents

I. Summary	1
II. Introduction	2
III. Analysis of the Historical Development and Practical Application of Methods of Dispute Settlement	5
IV. Problems of Revision of the Conventions	6
V. Improvement of the Dispute Settlement Procedures under the Aegis of the Permanent Court of Arbitration	8
Freedom to Appoint Arbitrators who are Not Members of the PCA	8
Modernization of Rules for Commissions of Inquiry	8
Inclusion of International Organizations as Parties in PCA Dispute Settlement Proceedings	10
Basis for Standing of Non-State Parties	11
Conciliation	12
Creation of Facilities for Dispute Resolution in Newly-expanding Fields	14
Inclusion of Provisions on Annulment, Revision and Enforcement of Awards	15
Reinforcement of the Convention's Ethical Considerations	16
Elimination of the Parallel Existence of the 1899 and 1907 Conventions	16
Reinforcing Links between the PCA and the United Nations	17
Encouraging the Use of Future Disputes Clauses	18
Other Measures to Improve and Promote Recourse to the PCA System	19
VI. Proposals for 1999	19
<i>Appendix 1:</i> Resolution II of the 1993 Conference of Members of the Permanent Court of Arbitration	23
<i>Appendix 2:</i> Members of the PCA 1999 Steering Committee	25
<i>Appendix 3:</i> Elements Regarding the PCA for Inclusion in 1999 Documents	27

PERMANENT COURT OF ARBITRATION 1999 STEERING COMMITTEE

Final Report and Recommendations to the Administrative Council

I. Summary

1. The Permanent Court of Arbitration (PCA) Steering Committee was established by the Secretary-General in 1994, pursuant to the authorization of the Administrative Council of the PCA. It is a broadly-based group of experts in international law and dispute resolution, representing a variety of legal cultures. The purpose of the Committee was to assist the International Bureau and the Administrative Council in preparing for the centenary of the PCA in 1999, by making recommendations concerning revision of the Hague Conventions establishing the PCA and improvement of the PCA's dispute settlement mechanisms.
2. The Committee met five times over the course of three years, and produced an interim report to the Administrative Council in 1995. This final report reviews the work of the Steering Committee and sets forth the Committee's final recommendations.
3. The Steering Committee takes note of its mandate ". . . to make recommendations whether to revise the Conventions and whether to improve the dispute settlement procedures under the aegis of the Permanent Court of Arbitration."
 - a. With respect to the improvement of the dispute settlement procedures under the aegis of the Permanent Court of Arbitration, the Steering Committee recommends that the Administrative Council:
 - i. inform the Governments of the existence of the various sets of optional rules¹ established by the International Bureau; urge them to make use of them, where appropriate, for both existing and future disputes; support the efforts of the International Bureau to publish and promote the rules to the fullest extent possible; and authorize the Secretary-General to propose the inclusion of a reference to the optional rules in any documents or instruments that may be adopted on the occasion of the centenary of the PCA in 1999;
 - ii. authorize the Secretary-General, and urge their own Governments, to encourage and promote the use of future disputes clauses providing for recourse to the PCA;
 - iii. authorize the Secretary-General to pursue the creation of facilities for dispute resolution in newly-expanding fields, such as environmental law;
 - iv. authorize the Secretary-General to continue steps aimed at eliminating the parallel existence of the 1899 and 1907 Conventions;

¹The PCA Optional Rules for Arbitrating Disputes between Two States (1992); PCA Optional Rules for Arbitrating Disputes between Two Parties of which only one is a State (1993); PCA Optional Rules for Arbitration Involving International Organizations and States (1996); PCA Optional Rules for Arbitration between International Organizations and Private Parties (1996); PCA Optional Conciliation Rules (1996); PCA Optional Rules of Procedure for Fact-finding Commissions of Inquiry (1997).

- v. authorize the Secretary-General to seek reinforcement of the links between the PCA and the United Nations, in order to strengthen the PCA's role as a complement to the ICJ and encourage all UN Member States to adhere to the 1907 Hague Convention;
 - vi. encourage and support the efforts of the International Bureau, *inter alia*, to:
 - increase the scope and efficiency of its system of providing information;
 - organize conferences and seminars that focus on the PCA's particular area of competence: dispute resolution involving States, thereby enhancing the visibility and reputation of the PCA; 5.
 - implement studies on new areas of activity for the PCA (e.g., settlement of environmental disputes);
 - participate in arbitration conferences abroad in order to make the PCA better-known and to keep up to date with developments in the field of arbitration; 1
 - publicize and promote the use of the PCA Financial Assistance Fund;
 - reimburse travel expenses for experts (particularly those from developing countries) who attend PCA conferences and seminars; and 6.
 - actively encourage States that are not yet parties to the Hague Conventions, or are parties to the 1899 Convention only, to accede to the 1907 Convention.
- b. Taking into account the practical difficulties of revising the Conventions, as summarized in paragraphs 21-29, *infra*, the Steering Committee does not recommend revision of the Hague Conventions in 1999.
- c. With respect to preparations for 1999, recommends that: 7.
- i. the Administrative Council authorize the Secretary-General to collaborate in consultations between the Governments of the Netherlands and the Russian Federation pursuant to UN General Assembly Resolution No. A/51/159, *inter alia* for the purpose of promoting the inclusion of certain elements regarding the PCA in any documents or instruments adopted in the context of the 1999 activities that deal with the prevention or mitigation of international conflicts and the peaceful settlement of international disputes;
 - ii. these elements be substantially in the form of the "Elements Regarding the PCA for Inclusion in 1999 Documents", set forth in Appendix 3 to the present Report;
 - iii. the Administrative Council further authorize the Secretary-General to propose the inclusion in the 1999 activities of one or more academic conferences on the topic of international dispute resolution in the 21st Century; 8.
 - iv. to the extent practicable in the light of available resources, a second conference of the Members of the PCA be held in 1999, and that the Administrative Council of the PCA hold a ceremonial meeting in 1999.

II. Introduction 9.

4. In September 1993, the International Bureau of the Permanent Court of Arbitration convened in The Hague, for the first time in the history of the PCA, a Conference of the —

Members of the Court.² The Members of the Court are potential arbitrators designated by the States Parties to the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes. Pursuant to article 44 of the 1907 Convention, each Contracting Power to the Hague Conventions may select up to four persons, "of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrator."

5. Sir Ninian Stephen, Member of the Court from Australia, presided over the Conference, which was attended by some 140 participants from 52 countries. The purpose of the Conference, which was organized in the context of the United Nations Decade of International Law, was to elicit from distinguished legal experts from the States Parties to the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes, their views or suggestions for enhancement of the PCA's role and preparation of the centenary of the First Hague Peace Conference in 1999.
6. To assist the Secretary-General in his efforts to enhance the role of the PCA and to prepare the centenary of the First Hague Peace Conference, the Conference concluded that a Steering Committee should be appointed to advise the Administrative Council and International Bureau of the PCA with respect to the development and application of dispute settlement methods and possible revision of the Conventions. In this connection, the Conference adopted its Resolution II, the complete text of which is annexed to this Report as Appendix 1.
7. At its meeting of April 25, 1994, the Administrative Council authorized the Secretary-General to establish a broadly-based Steering Committee having as its mandate the verbatim text of paragraph 2 of Resolution II of the 1993 Conference of Members, i.e., ". . . to analyze the historical development and practical application of methods of dispute settlement, to make recommendations whether to revise the Conventions and whether to improve the dispute settlement procedures under the aegis of the Permanent Court of Arbitration." The Committee consisted of approximately thirty experts in international law and dispute resolution, from all parts of the world, representing different legal systems and different levels of economic development. The members of the Steering Committee are listed in Appendix 2 to this Report.
8. Following a written exchange of views on the matters reflected in its mandate, the Steering Committee met for the first time on November 8-9, 1994 at the Peace Palace in The Hague. The participants discussed a list of questions prepared by the International Bureau on the basis of the issues raised in the preliminary written exchange of views. A summary of the views expressed at the meeting was prepared by the International Bureau and circulated to the members of the Steering Committee and the Administrative Council.
9. A subcommittee of five members of the Steering Committee met in January and February 1995, in order to review the summary of views and determine whether, and if so

²The proceedings of the Conference were published by the International Bureau in 1994 in a bilingual booklet, and distributed to the Members, the Administrative Council, and international law libraries.

to what extent, there was consensus, or a strong majority viewpoint, on any of the substantive matters discussed at the November 1994 meeting. It then prepared draft recommendations which, upon their approval by the full Steering Committee, could be presented to the Administrative Council. In keeping with the Committee's mandate, the recommendations concerned both preparations for 1999, as well as steps that could be taken immediately and in the near future to improve and enhance the PCA system.

10. The draft recommendations were discussed at a full meeting of the Steering Committee, held in The Hague on March 28, 1995. Members of the Steering Committee were then given the opportunity to comment in writing on the text of the recommendations, and a summary of these written comments was circulated. The revised recommendations were again discussed by the Steering Committee at its meeting of November 13-14, 1995.
11. These recommendations, which were limited to those matters on which the Committee had been able to reach substantial agreement, were incorporated in an Interim Report, which was transmitted to the members of the Administrative Council in December 1995. Annexed to the Interim Report were three sets of new draft optional rules³, prepared in collaboration with, and carefully scrutinized by, the Steering Committee, devoted to arbitration involving international organizations and to conciliation.
12. The Administrative Council devoted most of its meeting of March 18, 1996 to a discussion of the Interim Report. The Council accepted with little or no discussion the Steering Committee's recommendations concerning:
 - a. elimination of the parallel existence of the 1899 and 1907 Conventions;
 - b. reinforcement of the links between the PCA and the United Nations;
 - c. encouragement of the use of future disputes clauses;
 - d. creation of facilities for dispute resolution in newly-expanding fields, such as international environmental law;
 - e. establishment of rules of procedure for international commissions of inquiry;
 - f. implementation of further measures to promote recourse to the PCA system.
13. With respect to the three sets of draft optional rules attached to the interim report, the Council requested the opportunity to submit additional comments in writing. Upon expiration of the deadline for submission of written comments, the International Bureau established, effective July 1, 1996, the following sets of rules:
 - a. the PCA Optional Rules for Arbitration Involving International Organizations and States;
 - b. the PCA Optional Rules for Arbitration between International Organizations and Private Parties;
 - c. the PCA Optional Conciliation Rules.

³In 1992, the Administrative Council authorized the Secretary-General to establish the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States. These rules of procedure were patterned after the UNCITRAL Arbitration Rules, with the assistance of a panel of experts convened by the Secretary-General. Optional Rules for Arbitrating Disputes between Two Parties of which only one is a State were adopted in 1993.

14. The Council authorized the Secretary-General, in consultation with and on the basis of the recommendations of the Steering Committee, to continue the preparation of a set of proposals for a centennial conference of the PCA in 1999, with a view to enhancing the use of the various dispute resolution methods available in the Permanent Court of Arbitration.
15. The Steering Committee met on April 22, 1996, to continue its work. It reviewed draft optional rules for international commissions of enquiry, and optional clauses concerning revision, annulment and enforcement of arbitral awards. Significant attention was devoted to preparations for 1999, including a report on preparations by non-governmental organizations for related 1999 conferences, and discussion of draft Elements for a 1999 Declaration Regarding the PCA. At the conclusion of the meeting, it was apparent that the latter text in particular required redrafting. The members of the Steering Committee were invited to submit to the International Bureau no later than August 31, 1996, their written comments on the drafts concerning the inquiry procedure and annulment, revision and enforcement, and the draft elements.
16. This Final Report is based on the written comments received, as well as all of the Steering Committee's previous deliberations and exchanges of views. It was discussed by the Steering Committee at its meeting of June 2-3, 1997, and put into its final form immediately thereafter.
17. The purpose of this Report is to comply with the element of the Steering Committee's mandate, set forth in paragraph 2 of Resolution II of the 1993 Conference of Members, "to prepare a report . . . for circulation as widely as is practicable . . .," and to consolidate the Committee's conclusions and recommendations to the Administrative Council in final form.

III. Analysis of the Historical Development and Practical Application of Methods of Dispute Settlement

18. The Steering Committee did not engage in a lengthy study and discussion of this element of its mandate. Aspects of the historical development of methods of dispute settlement did enter into the Committee's discussions, particularly in examining whether to revise the 1907 Convention in order to eliminate "anachronisms." Similarly, the practical application of methods of dispute settlement was touched upon frequently, in discussing the various draft procedural provisions and examining the practice of other dispute resolution institutions and mechanisms.
19. The Steering Committee takes note of two publications, projected for 1997, that will contain detailed historical and practical information concerning the PCA: (1) an updated summary, in English and French, of all decisions rendered under the auspices of the PCA by arbitral tribunals and commissions of conciliation and inquiry, and (2) a comprehensive sourcebook on the PCA, containing, *inter alia*, the full texts of the PCA conventions, optional rules and arbitral awards, prepared by Judge Bola Ajibola, a Member of the PCA and of the Steering Committee.

20. The historical development of international dispute settlement has particular significance in preparing for those aspects of the 1999 gathering that constitute a commemoration of the First Hague Peace Conference and of the establishment of the PCA, in order to identify those aspects of the PCA's past that deserve commemoration in 1999, such as its having paved the way for the creation of subsequent tribunals, such as the PCIJ and the ICJ, and the substantive contribution of its cases to the development of international law and dispute resolution.

IV. Problems of Revision of the Conventions

21. The question of revising the Conventions, or even replacing them with a new, universal convention on the peaceful settlement of international disputes was raised at the 1993 Conference of Members, and presented to the Steering Committee at the outset of its work. It was discussed in particular detail at the Steering Committee's first two meetings.
22. Those who favored revision, either in the form of amendment of the 1907 Convention or adoption of a new convention, pointed out that the drafters of the 1907 Convention had anticipated that the Convention would again be revised in 1915, but World War I intervened and the Third Peace Conference was postponed. They felt that the Convention should be modernized and updated to reflect modern principles of international law, and to adapt it to the present-day international situation. Many emphasized the need to bring the Convention in line with the UN Charter, particularly with the principle of the non-use of force or the threat of force in international relations.
23. Those who favored the adoption of an entirely new instrument pointed out that the Hague Conventions were not universal by today's standards, because they had been prepared by a small group of European States with only the token participation of few non-European States. Since the beginning of the 20th Century, the number of sovereign States had increased significantly, and international organizations had proliferated. Revision by protocol would be limited to Contracting Powers, and provide no incentive for new States to participate in the drafting and adhere to the instrument, which was crucial to their future involvement in the PCA, and the universality of the PCA.
24. There was also a sense that the hundredth anniversary of the 1899 Convention might be a propitious time for revision. This would also be an appropriate culmination of the United Nations Decade of International Law, and the coming into force of a new or revised Convention soon thereafter would constitute a good start for the 21st Century, a hopeful note that it may be a century of peace.
25. The critics of revision were skeptical about the political will of States to accomplish such a task. Although updating and modernization of the earlier Conventions might be desirable, if a new instrument were drawn up it would again have to be in the form of a multilateral convention, subject not only to signature but also to ratification. Ratification can be a slow and cumbersome process, particularly in areas which, like dispute

resolution, touch upon aspects of sovereignty, and in view of the sheer number of States in the contemporary international community.

26. The critics further pointed out that amendment of the Hague Conventions presented a number of technical difficulties. While a large number of States were parties to both the 1899 and 1907 Conventions, there were States that were parties to one or the other, but not both. Only parties to the 1899 Convention would be entitled to participate in its amendment; a similar rule would apply to the 1907 Convention. Furthermore, States that were parties to neither Convention would be excluded from the amendment process. A situation could arise in which this subject was governed by four different instruments: the 1899 Convention, the 1907 Convention, an amended version of the 1899 Convention and an amended version of the 1907 Convention. This would lead to an undesirable proliferation of treaty texts, and would exclude those States that were not parties to either Convention.
27. Even if States that were not parties to either Convention were included in the drafting and adoption of an entirely new Convention, it is not clear that all parties to the 1899 and 1907 Conventions would consider it an improvement. If they failed to sign or ratify it, one might again have a situation in which instead of two conventions dealing with the same subject, there were three or even four.
28. The two Hague Conventions had, by and large, withstood the test of time. The under-use of the PCA had its roots in factors other than the quality of the provisions of the 1899 and 1907 Convention; e.g., the lack of political will by States to have recourse to them, or a more general reticence with respect to arbitration.
29. As none of the views expressed on this important question gathered broad support, the Steering Committee is unable to recommend revision of the 1907 Convention in 1999. There was general agreement, however, that the 1899 and 1907 Conventions, and the practice of the PCA, were sufficiently flexible to allow certain improvements in the PCA system to be made without revision. Thus, as further discussed below, the Conventions give the Secretary-General and the International Bureau the flexibility to provide services to "special" arbitral tribunals, including those in which one or both of the parties are non-Contracting Powers. Over the years, this has enabled the International Bureau to adapt the practice of the PCA to the exigencies of modern dispute resolution practice. Examples of this include the competence to administer dispute resolution proceedings in disputes between a State and a non-State party, the competence to administer conciliation, and the adoption of optional procedural rules which provide an up-to-date alternative for the provisions of the 1899 and 1907 Conventions. The Steering Committee believes that the organs of the PCA, most notably the International Bureau and the Administrative Council will, in the future, be able to continue to utilize this flexibility in developing responses to the changing needs of the international community.

V. Improvement of the Dispute Settlement Procedures under the Aegis of the Permanent Court of Arbitration

Freedom to Appoint Arbitrators who Are Not Members of the PCA

30. Pursuant to article 24 of the 1899 Convention and article 45 of the 1907 Convention, the arbitrators “must be chosen from the general list of Members of the Court.” A review of the cases submitted to arbitration under the auspices of the PCA reveals that, early in the history of the PCA, parties evidenced a desire not to be restricted, in the appointment of arbitrators, to the list of Members of the Court. They soon discovered that, by characterizing the arbitration as a “special Board of Arbitration” pursuant to article 47 of the 1907 Hague Convention (which authorizes the International Bureau “to place its offices and staff at the disposal of the Contracting Powers for the use of any special Board of Arbitration”), they could, in practice, deviate from article 45, and freely appoint whomever they wished. The first instance of this occurred as early as 1909, and it was used with increasing frequency, particularly after 1920.
31. The expansion of international commercial arbitration was enhanced by the principle of party autonomy, which is reflected, inter alia, in the 1976 UNCITRAL Arbitration Rules. These rules formed the basis for the PCA Optional Rules for Arbitrating Disputes between Two States, adopted in 1992, and the PCA Optional Rules for Arbitrating Disputes between Two Parties of which only one is a State, adopted in 1993, as well as the recently-adopted rules for international organizations (see *infra* paras. 39-44). All of the sets of optional arbitration rules expressly provide that “[t]he choice of arbitrators is not limited to persons who are listed as members of the Permanent Court of Arbitration.”
32. The Steering Committee is of the opinion that this matter could indeed be addressed in a revision of the 1907 Convention or the drafting of a new convention. Alone, however, it is not of sufficient weight to justify such revision. Recognition of the flexibility afforded by article 47 of the 1907 Convention, and the adoption of the various sets of optional rules, are an attempt to bring the practice of the PCA in line with the modern concept of party autonomy.

Modernization of Rules for Commissions of Inquiry

33. The Steering Committee is of the opinion that, as the 1992 Optional Rules for Arbitrating Disputes between Two States offer parties a modern alternative to the procedural arbitration provisions of the 1899 and 1907 Conventions, so should there be a modern, more detailed procedural framework for international commissions of inquiry. The 1899 Convention devotes only six brief articles to international commissions of inquiry. These provisions were broadened in the 1907 Convention, to twenty-nine fairly detailed articles.
34. In spite of the degree of detail introduced in the 1907 Convention, the Steering Committee observed that the Convention still allowed for a degree of party autonomy. For example, article 10 provides that the agreement between the parties (referred to as the “inquiry convention”) determines “the mode and time in which the Commission is to

be formed and the extent of the powers of the Commissioners.” Article 12 expressly allows the parties to deviate by agreement from the provisions of articles 45 and 57, concerning the formation of inquiry commissions. Finally, the Convention provisions governing the inquiry procedure apply only “. . . in so far as the parties do not adopt other rules” (art. 17).

35. In light of these provisions, the Steering Committee concluded that it would be particularly appropriate for the International Bureau to establish optional rules for inquiry proceedings, which parties could elect to adopt. If, in the future, there were to be formal revision of the 1907 Convention, one might at that time wish to consider deleting the exception, in article 9, for “honor and vital interests,” which several members of the Steering Committee considered archaic.
36. Mr. A. Bos, Legal Advisor of the Netherlands Ministry for Foreign Affairs, prepared several revisions of draft optional rules, which were discussed extensively by the Steering Committee. The Committee agreed that these rules should provide a self-contained procedural framework for commissions of inquiry, rather than simply supplementing the non-mandatory provisions of the 1907 Convention.
37. The elements of the new rules that the Committee considered most important included:
 - a. the denomination “Fact-finding Commissions of Inquiry” satisfies the need for modernization, while retaining a link to the Conventions;
 - b. the rules create a system of fact-finding that does not depend on the Conventions – it can be used by States and other parties that are not necessarily parties to the Conventions;
 - c. the parties have the freedom to identify the type of facts to be found;
 - d. in line with the other PCA optional rules, the parties are entitled to determine the place at which the commission meets;
 - e. membership on a commission is not limited to Members of the PCA, among which judges and lawyers predominate, as fact-finding often requires technical and special expertise;
 - f. the parties may seek the assistance of the Secretary-General of the PCA to act as appointing authority, or to designate an appointing authority;
 - g. the commission’s report need not be absolutely confidential - the parties are free to make it public if they so agree;
 - h. the rules recognize the need, and provide, for obtaining the cooperation of States to assist commissions of inquiry.
38. The Steering Committee is of the opinion that the draft “Permanent Court of Arbitration Optional Rules for Fact-finding Commissions of Inquiry”, as reviewed by the Steering Committee, respond to the need for modernization of the PCA framework for international commissions of inquiry. The Steering Committee recommends that the Administrative Council authorize the Secretary-General to establish rules substantially in conformance with the draft rules, and that the members of the Administrative Council inform their Governments of the existence of these rules, and their availability for use, wherever appropriate, with respect to both existing and future disputes. The Committee

further recommends that the rules be referred to in the document or documents that may be adopted on the occasion of the centenary of the PCA in 1999, and that the Administrative Council support the efforts of the International Bureau to publish and promote the rules to the fullest extent possible.

Inclusion of International Organizations as Parties in PCA Dispute Settlement Proceedings

39. From the outset, the members of the Steering Committee agreed that intergovernmental organizations (IGOs), and the States and other parties with whom they engage in transactions, required an effective forum for dispute resolution, and that it was appropriate for the PCA to take steps aimed at responding to this. Here again, the Committee concluded that this could be accomplished by establishing a procedural framework that parties could elect to be bound by. Professor Pierre Pescatore, although not a member of the Steering Committee, was invited to draft optional rules for arbitration involving international organizations.
40. The first draft elaborated a single set of rules for the three contentious constellations envisaged (IGO v. State, IGO v. IGO, and IGO v. "any other party" (i.e., non-State, non-Organization)). In the course of the Steering Committee's detailed discussions of this draft, it became apparent that two sets of rules were needed. The Steering Committee's comments and Prof. Pescatore's revisions resulted in the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States (for disputes between an IGO and a State or other IGO) and the Permanent Court of Arbitration Optional Rules for Arbitration between International Organizations and Private Parties. These were based, respectively, on the PCA Optional Rules for Arbitrating Disputes between Two States (1992), and the PCA Optional Rules for Arbitrating Disputes between Two Parties of which only one is a State (1993), both of which, in turn, closely followed the UNCITRAL Arbitration Rules.
41. The two sets of optional rules relating to IGOs are nearly identical to the earlier PCA rules upon which they were patterned. Modifications were introduced only where necessary in view of the subject matter of the new rules. Thus, the main substantive changes are found in only three articles: article 1 (Scope of Arbitration), article 3 (Notice of Arbitration) and article 33 (Applicable Law).
42. The two sets of draft rules as approved by the Steering Committee were annexed to the Committee's Interim Report. The Steering Committee recommended that the Administrative Council authorize the Secretary-General to establish rules substantially in accordance with the terms of the drafts. As set forth in paragraph 13, *supra*, at its meeting of March 18, 1996, the Administrative Council requested the opportunity to submit additional written comments on the drafts. Effective July 1, 1996, the International Bureau established the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States, and Optional Rules for Arbitration between International Organizations and Private Parties, substantially in accordance with the drafts approved by the Steering Committee, and incorporating where practicable the comments of the members of the Administrative Council.

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43. The Steering Committee notes that the International Bureau has published the new rules and distributed them, in particular, among international organizations. In just a short period of time, the rules appear to have generated significant interest, and a number of international organizations have contacted the International Bureau for additional information and assistance in incorporating dispute resolution clauses in their contracts and agreements.
 44. The Steering Committee is of the opinion that the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States, and the Permanent Court of Arbitration Optional Rules for Arbitration between International Organizations and Private Parties, respond to the need for a forum for the resolution of disputes involving international organizations. The Steering Committee recommends that the members of the Administrative Council inform their Governments of the existence of these rules, and their availability for use, wherever appropriate, with respect to both existing and future disputes. The Committee further recommends that the rules be referred to in the document or documents that may be adopted on the occasion of the centenary of the PCA in 1999, and that the Administrative Council support the efforts of the International Bureau to publish and promote the rules to the fullest extent possible.

Basis for Standing of Non-State Parties

45. The Hague Conventions contemplate dispute resolution between States only. Article 37 of the 1907 Convention provides that international arbitration “has for its object the settlement of disputes *between States* ...” [emphasis added]. As pointed out in paragraph 30, *supra*, article 47 of the same Convention authorizes the International Bureau “to place its offices and staff at the disposal of the Contracting Powers for the use of *any* special Board of Arbitration” [emphasis added]. When in 1934 the President of an arbitral tribunal charged with resolving a dispute between the Government of China and Radio Corporation of America (a private company), asked the Secretary-General to make the administrative services of the International Bureau available, the request was granted, with the consent of the Administrative Council, on the basis of article 47.
46. In 1962, procedural rules were drawn up for the settlement by arbitration or conciliation⁴ of disputes between two parties of which only one is a State and the other a private person or company. These were replaced in 1993 by the PCA Optional Rules for Arbitrating Disputes between Two Parties of which only one is a State.
47. Some members of the Steering Committee expressed concern as to the legal basis for the expansion of the PCA’s sphere by means of adoption of optional rules by the Administrative Council. They felt that parties desiring State-non-State arbitration would be best served by having a clear and transparent system of dispute resolution, rather than having to submit to a special, optional system. Others felt that the PCA should not make

⁴Conciliation as a form of dispute resolution is not found in either the 1899 or the 1907 Convention, see *infra* paragraph 51.

its resources and facilities available to non-State parties under any circumstances, as this did not comport with its purpose of safeguarding international peace.

48. Most members of the Steering Committee felt that the PCA's involvement in settling disputes between a State and a non-State entity could be justified on one or both of the following grounds, which illustrated the flexibility of the Hague system: (i) article 49 of the 1907 Convention could be interpreted as giving the Administrative Council the power to authorize the establishment by the International Bureau of optional rules, even those that expand the mandate of the PCA, or (ii) pursuant to article 47, State-non-State arbitration could continue to take place on an ad hoc basis, outside the express scope of the Conventions.
49. The Steering Committee notes that the Optional Rules for Arbitrating Disputes between Two Parties of which only one is a State were drawn up by a group of experts in international law and dispute resolution established by the International Bureau, and were discussed quite extensively by the Administrative Council, which then authorized the Secretary-General to establish them. The use of the 1976 UNCITRAL Arbitration Rules as a model ensures that the substance of the rules reflects the consensus of the international community concerning modern arbitration practice and procedural safeguards, and the consensual nature of all PCA dispute resolution provides adequate protection against the excessive exercise of jurisdiction. The increasing number of cases of this type submitted to the PCA (six were pending in 1996) confirms the need for such services.
50. The Steering Committee therefore concludes that, while the standing of non-State parties in PCA dispute resolution might well be considered in the context of a future revision of the 1907 Convention or the adoption of a new convention, it nevertheless, in its present form, falls legitimately within the mandate of the PCA. The Steering Committee recommends that the members of the Administrative Council remind their Governments of the existence of the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States, and the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two Parties of which only one is a State, and their availability for use, where appropriate, for both existing and future disputes. The Committee further recommends that the rules be referred to in the document or documents that may be adopted on the occasion of the centenary of the PCA in 1999, and that the Administrative Council support the efforts of the International Bureau to publish and promote the rules to the fullest extent possible.

Conciliation

51. The 1899 and 1907 Hague Conventions provide expressly for four types of dispute resolution: good offices, inquiry, mediation and arbitration. In 1935, the President of a conciliation commission dealing with a dispute between Denmark and Lithuania requested the Secretary-General to place the facilities and services of the International Bureau at the disposal of the parties, and the Administrative Council authorized the Bureau to do so. In the 1950s, the Bureau acted as secretariat for two more conciliation commissions. The 1962 PCA Rules of Arbitration and Conciliation for Settlement of

International Disputes Between Two Parties of Which Only One is a State established an express framework for this type of dispute resolution in State-non-State disputes.

52. From its inception, the Steering Committee strongly supported strengthening the PCA's role in conciliation. The Committee noted that an increasing number of international agreements, particularly in specialized areas such as environmental law, provided for some type of conciliation. Those who favored formal revision expressed the view that conciliation should be given an express basis in a new, or revised, convention. The predominant view was, however, that the present PCA system was flexible enough to allow for the adoption of optional rules for conciliation proceedings. Judge Howard M. Holtzmann was invited to prepare draft rules for discussion by the Steering Committee.
53. In order to maximize consistency with the other sets of PCA Rules, which are all based on the UNCITRAL Arbitration Rules, the PCA Optional Conciliation Rules are modeled after the 1980 UNCITRAL Conciliation Rules. The UNCITRAL Rules were also considered to be in line with the overall PCA policy of respect for flexibility and party autonomy. Although the *rapporteur* had started with the assumption that, as was the case for arbitration, there would be two sets of PCA conciliation rules, one for inter-State disputes and one for State-non State-disputes, it soon became clear that one system would work for both types of proceedings. The rules are intended to make it easier for parties to come to conciliation, e.g., to assist them in providing for conciliation, initiating conciliation proceedings, choosing conciliators, and ensuring that the failure of conciliation would not prejudice either party in any subsequent proceedings. The Committee also considered other recent conciliation rules, such as those of the Organization for Security and Cooperation in Europe (1993) and the United Nations Model Rules for the Conciliation of Disputes between States (1995).
54. The draft conciliation rules as accepted by the Steering Committee were annexed to the Committee's Interim Report, and the Steering Committee recommended that the Administrative Council authorize the Secretary-General to establish rules substantially in accordance with the terms of the drafts. As set forth in paragraph 13, *supra*, at its meeting of March 18, 1996, the Administrative Council requested the opportunity to submit additional written comments on the drafts. Effective July 1, 1996, the International Bureau established the Permanent Court of Arbitration Optional Conciliation Rules, which are substantially in accordance with the drafts approved by the Steering Committee, and which incorporate where practicable the comments of the members of the Administrative Council.
55. The Steering Committee notes that the International Bureau has published the new rules and begun distributing them to interested parties. The Steering Committee is of the opinion that the Permanent Court of Arbitration Optional Conciliation Rules respond to the need for a flexible, modern system for the conciliation of international disputes. The Steering Committee recommends that the members of the Administrative Council inform their Governments of the existence of these rules, and their availability for use, wherever appropriate, with respect to both existing and future disputes. The Committee further recommends that the rules be referred to in the document or documents that may be adopted on the occasion of the centenary of the PCA in 1999, and that the

Administrative Council support the efforts of the International Bureau to publish and promote the rules to the fullest extent possible.

Creation of Facilities for Dispute Resolution in Newly-expanding Fields

56. In its discussions, the Steering Committee observed that one way of improving the PCA system of dispute resolution would be to monitor and respond to developments in newly-expanding fields of international law. It noted that while substantive international environmental law had undergone rapid expansion in recent decades, the development of appropriate mechanisms for its implementation and enforcement had lagged behind. It further noted, in this connection, that the 1992 Rio Declaration on Environment and Development emphasized the significant role of international law in protecting the environment and ensuring sustainable development. Agenda 21, the program of implementation of the principles contained in the Rio Declaration, dealt in Chapter 39 with International Legal Instruments and Mechanisms aimed at achieving these goals. With respect to dispute settlement and avoidance, Section 39.9 provided, *inter alia*, that “. . . States should further study and consider methods to broaden and make more effective the range of techniques available” Principle 26 of the Rio Declaration provided that “States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.”
57. The Steering Committee therefore notes with approval that the International Bureau has taken steps aimed at exploring and reinforcing the role of existing institutions, particularly the PCA, in the resolution of international environmental disputes. A background paper, prepared by two experts in the field, was presented to and discussed by a working group of government representatives, convened by the International Bureau in June 1996. The working group concluded, *inter alia*, that the PCA could play a role in a number of ways, and the International Bureau has undertaken to implement, funds permitting, two initial projects:
- a. The establishment of an informal database of experts on environmental matters, not limited to legal experts, who could be called upon as arbitrators, conciliators and fact-finders; and
 - b. The development of models and guidelines for drafting clauses on dispute resolution in bilateral and multilateral environmental treaties.
58. As indicated in its Interim Report, the Steering Committee recommends that the Administrative Council encourage and support the efforts undertaken by the International Bureau to promote the use of existing dispute resolution facilities in newly-expanding fields such as environmental law.

Inclusion of Provisions on Annulment, Revision and Enforcement of Awards

59. Some members of the Steering Committee suggested that the PCA system would be enhanced by the inclusion of provisions on annulment, revision and enforcement of awards. They pointed out that the 1965 Washington Convention, which established the International Centre for Settlement of Investment Disputes (ICSID), had seen fit to

provide for these matters, and that similar provisions were found in the International Law Commission's 1958 Model Rules on Arbitral Procedure. The prevailing view on the Steering Committee was, however, that the need for finality in international dispute resolution outweighed the potentially increased fairness of including such provisions. The Committee noted that, in contrast to most domestic legal systems, the international legal system, whether arbitral or judicial, was generally one of a single instance, rather than hierarchical. There was normally no instance of recourse for purposes of annulment or revision, and no policing authority to ensure enforcement. The Committee also noted that the PCA Rules did contain provisions on correction and interpretation of awards, and that an award tainted by corruption of an arbitrator would probably be subject to attack, even in the absence of express provisions. Finally, provisions on revision and annulment were capable of being invoked abusively as a dilatory tactic, which would not enhance the efficiency of PCA proceedings.

60. The International Bureau requested Judge Koorosh Ameli to review the matter, and produce draft provisions. Judge Ameli prepared draft revisions to the PCA Optional Rules for Arbitrating Disputes between Two States (1992) and Optional Rules for Arbitrating Disputes between Two Parties of which only one is a State (1993). These proposed revisions were based in large part on the provisions on revision, annulment and enforcement contained in the 1965 ICSID Convention. The drafts contemplated the inclusion in both sets of optional rules of five new articles (38-42) patterned after the ICSID Convention. The existing articles 38-41 of the rules were to be renumbered accordingly. Proposed article 38 gave either party the right to request revision of an award ". . . on the ground of discovery of some fact of such a nature as decisively to affect the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the applicant and that the applicant's ignorance of that fact was not due to negligence" (ICSID art. 51). Proposed article 39 enumerated the following grounds for annulment of an award (ICSID art. 52):

- a. that the tribunal was not properly constituted;
- b. that the tribunal has manifestly exceeded its powers;
- c. that there was corruption on the part of a member of the tribunal;
- d. that there has been a serious departure from a fundamental rule of procedure; or
- e. that the award has failed to state the reasons on which it is based.

The procedure contemplated for annulment included the establishment of a committee of three persons chosen from among the Members of the PCA. Proposed article 40 emphasized the final and binding nature of the award, and article 41 dealt with recognition and enforcement. States parties undertook to enforce the award "within its territories as if it were a final judgment of its highest court." Proposed article 42 was an express retention of any sovereign immunity from execution that a State party might enjoy in a third state.

61. These drafts were discussed by the Steering Committee, and the members of the Committee were given the opportunity to submit written comments. Having reviewed these draft articles on annulment, revision and enforcement of arbitral awards, and in light of the abovementioned considerations, the Steering Committee is unable to agree

on their incorporation in the PCA optional rules or their adoption as an integral part of the PCA system of arbitration. The Committee recommends, however, that the International Bureau, if approached by parties on this issue, draw their attention to the existence of the relevant provisions on annulment, revision and enforcement in such international instruments and model rules as the 1899 and 1907 Hague Conventions, the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the International Law Commission's 1958 Model Rules on Arbitral Procedure, and the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Reinforcement of the Convention's Ethical Considerations

62. In the course of the Steering Committee's early discussions, a member of the Committee suggested that article 62 of the 1907 Convention, which prohibits "Members of the Permanent Court from acting as agents, counsel or advocates, except on behalf of the Power which appointed them . . .," was not being scrupulously observed. A review of the list of Members published in the PCA's Annual Report revealed a preponderance of lawyers, who most certainly represented clients other than their own governments. Other members suggested a different reading of article 62, as meaning that a Member could not act as agent, counsel or advocate *with respect to a particular PCA Tribunal*. The provision was not intended to restrict Members in the pursuit of professional activities entirely unrelated to the PCA.
63. Although the Steering Committee recognizes the importance of ethical considerations, including the problem of compatibility of functions of non-full-time tribunal members, and believes that the International Bureau could, at some point, consider drawing up guidelines in this respect, it does not, at the present time, find it necessary or opportune, in examining the improvement of the dispute settlement procedures under the aegis of the Permanent Court of Arbitration, to make specific recommendations to this effect.

Elimination of the Parallel Existence of the 1899 and 1907 Conventions

64. In discussing the possible revision of the Hague Conventions, the Steering Committee noted that the parallel existence of two conventions (1899 and 1907) might present technical difficulties. While a large number of States were parties to both the 1899 and 1907 Conventions, there were States that were parties to one or the other, but not both. Although, in practice, the parallel existence of the two conventions had not yet caused any problems, this could be explained by the PCA's inactivity, and did not necessarily mean that there was no potential for future ambiguity. Furthermore, if at any future time it should become desirable to modify the PCA system, having only one convention to deal with would simplify matters.
65. The Steering Committee notes that the International Bureau has for some time, in collaboration with the Netherlands Government (as depositary of the conventions), been engaged in a campaign to encourage countries that are parties to only the 1899 Convention to accede to the 1907 Convention, and several countries have already done so.

66. The Steering Committee recommends that the International Bureau continue this campaign, and that the Administrative Council lend its active support to these efforts, *inter alia*, by encouraging all States that participate in the activities of the PCA to accede to the 1907 Convention.

Reinforcing Links between the PCA and the United Nations

67. The Steering Committee noted in its discussions that a modern system of international dispute resolution could not exist in a vacuum; links to other relevant organizations, in particular the United Nations, were absolutely essential. In this context, the Committee applauded the International Bureau's having obtained permanent observer status at the General Assembly in 1993. As set forth in the Interim Report, the Committee noted that the long-standing links between the two organizations included the following:
- a. The PCA is the oldest worldwide institution in existence that is dedicated to the resolution of disputes between States. It shares with the United Nations the objective of resolving international disputes in an orderly and amicable manner.
 - b. Eighty-four States are parties to the Hague Conventions of 1899 and/or 1907. With one exception (Switzerland), all of these States are also members of the United Nations.
 - c. Articles 4 and 5 of the Statute of the ICJ, which forms an integral part of the Charter of the United Nations, confer on the PCA Members of each State Party - denominated for that purpose as its "national group" - the right to nominate candidates for the International Court of Justice. The PCA is thus the only institution, other than the organs of the League of Nations and the United Nations, to be mentioned by name in the UN Charter.
 - d. Article 33 of the Charter of the United Nations calls upon the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, to seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or other peaceful means of their own choice. The PCA system administers four of these methods: enquiry, mediation, conciliation and arbitration.
 - e. In 1976, the United Nations Commission on International Trade Law (UNCITRAL) adopted a set of rules for international commercial arbitration. The General Assembly has recommended the use of these UNCITRAL Rules in the settlement of disputes arising in the context of international commercial relations. The UNCITRAL Rules entrust to the Secretary-General of the PCA a function of great responsibility, vital to maintaining the integrity of the arbitral process: the power to designate an "appointing authority" for the purpose of appointing the members of an arbitral tribunal when those entitled to make the appointment fail to do so (arts. 6 and 7 of the UNCITRAL Arbitration Rules).
 - f. These links between the United Nations and the PCA were given renewed meaning and emphasis when the General Assembly declared the period 1990-1999 to be the United Nations Decade of International Law, citing, *inter alia*, that the end of the decade will coincide with the celebration by the Permanent Court of Arbitration of 100 years of service to the international community.

68. The Steering Committee was unanimous in its conclusion that the PCA must remain separate, and that any links with the UN should fall short of complete integration. The PCA should focus on strengthening the existing links between the two organizations, and exploring ways in which they could function complementarily. It noted, for example, that the UN was over-utilized in the area of preventive diplomacy. Greater emphasis should be placed on the types of dispute settlement that are expressly referred to in the UN Charter (e.g., mediation, conciliation, fact-finding) but are not available from UN organs. In addition, it was important that preparations for 1999 be coordinated with the UN, particularly with a view to encouraging the participation of as many States as possible, and marking the end of the UN's Decade of International Law.
69. The Steering Committee therefore recommends that the Administrative Council encourage the PCA Member States to seek to foster at the UN an exchange of views on the relationship between the PCA and the UN, with a view to the possible adoption by the UN General Assembly and Security Council of resolutions declaring, *inter alia*, that UN conventions providing for recourse to any of the dispute settlement mechanisms administered by the PCA shall provide where appropriate for recourse to PCA dispute resolution.

Encouraging the Use of Future Disputes Clauses

70. The Steering Committee noted in its discussions that the PCA system of dispute resolution was one of consensual jurisdiction. The creation of a mechanism for compulsory arbitration had been debated, and narrowly defeated, at both the 1899 and 1907 Peace Conferences. While the Hague Conventions contemplate, as a general matter, the submission of existing disputes to arbitration on the basis of a "compromis," modern arbitration practice encourages the inclusion, in contracts or international agreements, of a clause referring future disputes arising thereunder to arbitration. Such a clause constitutes a binding agreement, thereby creating a kind of compulsory jurisdiction, in the event a dispute should arise. The inclusion of such clauses in appropriate instruments would enhance recourse to the PCA, and would be in the interest of potential litigants, because of the existence of the PCA optional rules for disputes involving various types of parties (e.g., States, international organizations and private parties). The Steering Committee notes that all of the optional rules contain model clauses for this purpose, and that the staff of the International Bureau is available to advise parties in drafting the appropriate clauses.
71. The Steering Committee therefore recommends that the Administrative Council encourage recourse to arbitration by encouraging the use of future disputes clauses, not only in conventions adopted under the auspices of the UN and its specialized agencies, but also in bilateral and other multilateral international agreements and in contracts involving State parties, in cases in which the parties elect to have recourse to dispute resolution other than judicial settlement. The Committee further recommends that the International Bureau continue its efforts to increase international awareness of this possibility, and continue to make its assistance available in the drafting of the appropriate clauses, and that the Administrative Council encourage the Contracting

Powers to seek such assistance from the International Bureau whenever it appears, in the course of ongoing treaty and contract negotiations, that it might be appropriate to include a future disputes provision referring to the PCA.

Other Measures to Improve and Promote Recourse to the PCA System

72. The members of the Steering Committee welcome the revitalization efforts undertaken by the International Bureau since 1990, and recommend that they be continued and expanded upon as much as possible. More specifically, the Steering Committee recommends that the International Bureau participate in relevant UN activities, as well as keeping abreast of the work of the International Law Commission. It is also important to publicize and emphasize the Secretary-General's role in designating appointing authorities pursuant to the UNCITRAL Arbitration Rules.
73. The Steering Committee recommends that, to the extent practicable and consistent with available resources, the Administrative Council encourage and support the efforts of the International Bureau, *inter alia*, to:
 - a. increase the scope and efficiency of its system of providing information;
 - b. organize conferences and seminars that focus on the PCA's particular area of competence (dispute resolution involving States) and its availability, thereby enhancing the visibility and reputation of the PCA;
 - c. implement studies on new areas of activity for the PCA (e.g., settlement of environmental disputes);
 - d. participate in arbitration conferences abroad in order to make the PCA better-known and to keep up to date with developments in the field of arbitration;
 - e. publicize and promote the use of the PCA Financial Assistance Fund;
 - f. reimburse travel expenses for experts (particularly those from developing countries) who attend PCA conferences and seminars; and
 - g. actively encourage States that are not yet parties to the Hague Conventions, or are parties to the 1899 Convention only, to accede to the 1907 Convention.

VI. Proposals for 1999

74. Pursuant to Resolution II of the 1993 Conference of the Members of the PCA (see *supra* paras. 4-6; see also Appendix 1) the work of the Steering Committee was "in preparation of the Centenary of the First International Peace Conference." The Steering Committee therefore considered from the outset that it would be expected to make recommendations as to the form and content of the 1999 centenary celebration. At its meeting of March 18, 1996, the Administrative Council agreed to authorize the Secretary-General, in consultation with and on the basis of the recommendations of the Steering Committee, to continue the preparation of a set of proposals for a centennial conference of the PCA in 1999, with a view to enhancing the use of the various dispute resolution methods available from the Permanent Court of Arbitration.

75. In this context, the Steering Committee had before it, *inter alia*, the following proposals and documents:

- a. a proposal made in 1994 by the Government of the Russian Federation for a Third Hague Peace Conference in 1999, dealing with the improvement of the system of the peaceful settlement of international disputes including possible adjustment or revision of the Conventions of 1899 and 1907; the filling of lacunae in the international humanitarian law applicable to armed conflicts and its development; and the establishment of a system of international criminal justice with regard to crimes against peace and humanity and other international offences;
- b. Draft proposals by groups of NGOs entitled "Memorandum: 1999 Year of Opportunity," and "International NGO Campaign for the 1999 Third Hague Peace Conference," emphasizing the appropriateness of having the last world conference of the century - after an historic series of conferences on the environment, development, human rights, population, women, and habitat - be one on peace, and calling on the participation of a greater number of States in the activities of the PCA;
- c. a commitment by the non-aligned movement, made at a meeting in The Hague in 1989 and reiterated at its 1995 summit in Colombia, to call for a third international peace conference, aimed at the promotion and enhancement of peaceful methods for the settlement of disputes between States, including resort to the International Court of Justice and compliance with its judgments; the achievement of general and complete disarmament; strengthening the respect for international principles against the threat or use of force, intervention, interference and other coercive measures in international relations; and public education for a better understanding of international law;
- d. draft elements concerning the PCA, prepared by Prof. Louis B. Sohn, for possible inclusion in any 1999 document or documents that may be considered for adoption by government representatives in the context of the 1999 activities.

76. The Steering Committee viewed its mandate in this respect as being limited to preparing the PCA's contribution to the activities for the centennial of the 1899 Peace Conference, and not as requiring it to make proposals about what the international community as a whole should attempt to achieve in 1999. The Committee saw its role as making recommendations for and preparing the PCA's contribution to the 1999 program.

77. In this context, the Steering Committee took note of General Assembly Resolution No. A/51/159, of December 16, 1996, regarding "1999 action dedicated to the centennial of the first International Peace Conference and to the closing of the United Nations Decade of International Law," which reads in part as follows:

"The General Assembly,

[]

Recognizing also the invaluable contribution of the first International Peace Conference to the settling or resolving of international disputes or situations which can cause the infringement of peace, by adopting the Convention for the Pacific Settlement of International Disputes and establishing the Permanent Court of Arbitration,

[]

2. Requests the Governments of the Russian Federation and the Netherlands to arrange, as a matter of urgency, a preliminary discussion with other interested *Member States on the substantive content of 1999 action and to seek, in this respect, the cooperation of the International Court of Justice, the Permanent Court of Arbitration, relevant intergovernmental organizations as well as other relevant organizations;

[]

4. Decides to include in the provisional agenda of its fifty-second session under the item entitled 'United Nations Decade of International Law' the sub-item entitled '1999 action dedicated to the centennial of the first International Peace Conference and to the closing of the United Nations Decade of International Law.'"

78. The Steering Committee notes that, as recommended in paragraph 2 of the above Resolution, the Governments of Russia and The Netherlands have initiated consultations, and have each established committees for the preparation of 1999 activities. The resolution also recommends that, in determining the substantive content of 1999 action, the two Governments seek the cooperation of the Permanent Court of Arbitration. The Steering Committee welcomes this development.
79. As indicated in the discussion of the possible revision of the Hague Conventions (see *supra* paras. 22-30), the Steering Committee is unable to recommend the adoption of an instrument requiring ratification. This process would be cumbersome and time-consuming, and might ultimately prove unsuccessful. The Committee prefers to recommend the inclusion in all relevant 1999 documents of provisions regarding the PCA. In this context, the Steering Committee recommends that the Administrative Council authorize the Secretary-General to collaborate in consultations between the Government of The Netherlands and the Russian Federation pursuant to UN General Assembly Resolution No. A/51/159, *inter alia* for the purpose of promoting the inclusion of certain elements regarding the PCA in any documents or instruments adopted in the context of the 1999 activities that deal with the prevention or mitigation of international conflicts and the peaceful settlement of international disputes.
80. The Steering Committee further recommends that these elements be substantially in the form of the "Elements Regarding the PCA for Inclusion in 1999 Documents", set forth in Appendix 3 to the present Report.
81. The Steering Committee recommends that the adoption of 1999 documents should not be limited to the Contracting Powers to the Hague Conventions. In the context of General Assembly Resolution No. A/51/159, all Member States of the United Nations should be invited to participate in the adoption of documents reflecting their commitment to utilize existing mechanisms, including the Permanent Court of Arbitration, to the greatest extent possible, for the prevention or mitigation of international conflicts and the peaceful settlement of international disputes. The mechanics of adoption, and the character of the 1999 gathering (Third Peace Conference, meeting of heads of state or diplomatic representatives, etc.) should be determined through the consultations of the

Governments of The Netherlands and the Russian Federation, as recommended in General Assembly Resolution No. A/51/159.

82. The Committee further recommends that the Administrative Council authorize the Secretary-General to propose, *inter alia*, the inclusion in the 1999 activities of one or more academic conferences on the topic of international dispute resolution in the 21st Century.
83. Within the context of the PCA itself, the Steering Committee recommends that, to the extent practicable in the light of available resources, a second conference of the Members of the PCA, along the lines of the first Members' Conference in 1993, be held in 1999, and further, that the Administrative Council of the PCA hold a ceremonial meeting in 1999.

THE HAGUE, JUNE 3, 1997

RESOLUTION II

THE CONFERENCE OF MEMBERS OF THE PERMANENT COURT OF ARBITRATION
MEETING at the Peace Palace, The Hague, on 10 and 11 September 1993;

RECALLING the First International Peace Conference that convened at The Hague on 18 May 1899 and adopted the Convention for Pacific Settlement of International Disputes; and the second such Conference that convened on 15 June 1907 *inter alia* to revise the Convention of 1899 and adopted the Convention for the Pacific Settlement of International Disputes of 1907;

NOTING that only a minority of the States which make up the world community today were in a position to present their views at either International Peace Conference;

NOTING the 1989 proposal of the Non-Aligned Countries to convene, at the end of the United Nations Decade of International Law in 1999, a Third International Peace Conference at The Hague that would adopt appropriate international instruments for the enhancement of international law and the strengthening of methods for the peaceful settlement of international disputes;

CONVINCED that the value of such conference, if held, and the effectiveness of international instruments adopted by it would be greatly enhanced by participation of the largest possible number of States:

1. STRESSES the need for adequate preparation of the proposed Third International Peace Conference at the end of the United Nations Decade of International Law in 1999 and, in that connection, the need for work to be carried out at the regional level, where appropriate, under the auspices of existing regional organizations, as well as at the national level, with the active participation of the Members of the Permanent Court of Arbitration;
2. INVITES the Administrative Council to authorize the Secretary-General, in preparation of the Centenary of the First International Peace Conference, to appoint a broadly-based Steering Committee, not limited to Members of the Permanent Court of Arbitration, to analyse the historical development and practical application of methods of dispute settlement, to make recommendations whether to revise the Conventions and whether to improve the dispute settlement procedures under the aegis of the Permanent Court of Arbitration, to prepare a report on the results for circulation as widely as is practicable, and in that connection to carry out studies and organize seminars with the participation of experts from States of different geographical areas, of different levels of economic development and with different legal systems;
3. INVITES regional and other relevant organizations to transmit to the Secretary-General for circulation to States Parties to the Conventions any published reports of preparatory work referred to in the preceding paragraph.

The Hague, 11 September 1993

Members of the PCA 1999 Steering Committee
as at June 3, 1997

Name	Position	Organization	Country
Bola Ajibola	Judge	Constitutional Court of Bosnia-Herzegovina	Nigeria
Koorosh H. Ameli	Judge	Iran-United States Claims Tribunal	Iran
Carlos J. Arguello	Legal Advisor	Ministry of Foreign Affairs	Nicaragua
Mohammed M. Bedjaoui	Judge	International Court of Justice	Algeria
Prafullachandra Bhagwati	Former Chief Justice		India
Adriaan Bos	Legal Advisor	Ministry of Foreign Affairs	Netherlands
Bengt Broms	Judge	Iran-United States Claims Tribunal	Finland
Lucius Caflisch	Legal Advisor	Federal Department of Foreign Affairs	Switzerland
Rodrigo Diaz Albónico	Ambassador	Embassy of Chile, Ottawa, Canada	Chile
Luigi Ferrari Bravo	Professor/President	International Law Commission/UNIDROIT	Italy
Carl. Fleischhauer	Judge	International Court of Justice	Germany
Gavan Griffith	Solicitor-General		Australia
Gilbert Guillaume	Judge	International Court of Justice	France
Conrad K. Harper	Fmr Legal Advisor	Department of State	USA
Howard M. Holtzmann	Attorney/Arbitrator		USA
Robert Y. Jennings	Professor	Cambridge University	UK
Jean Dieudonné Ntsama	Advisor	Ministry of Foreign Affairs	Cameroon
Shigeru Oda	Judge	International Court of Justice	Japan
Gonzalo Parra-Aranguren	Judge	International Court of Justice	Venezuela
José A. Pastor Ridruejo	Head Legal Dept.	Ministry of Foreign Affairs	Spain
Christopher Pinto	Secretary-General	Iran-United States Claims Tribunal	Sri Lanka
Raymond Ranjeva	Judge	International Court of Justice	Madagascar
Shabtai Rosenne	Ambassador/Professor		Israel
Shi Jiuyong	Judge	International Court of Justice	China
Leonid A. Skotnikov	Ambassador	Russian Embassy, The Hague	Russian Fed.
Krzysztof Skubiszewski	President	Iran-United States Claims Tribunal	Poland
Louis B. Sohn	Professor	George Washington University	USA
<i>Special Consultant:</i>			
Pierre Pescatore	Professor/Judge		Luxemburg

**Elements Regarding the PCA Permanent Court of Arbitration
for Inclusion in 1999 Documents**

[The following elements could be considered for inclusion in various documents that may result from activities in 1999 aimed at the centenary of the First Peace Conference, the hundredth anniversary of the establishment of the Permanent Court of Arbitration and the end of the UN Decade of International Law.]

Recitals:

Reaffirming their obligation to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered, and to seek solutions to such disputes through negotiation, fact-finding, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice;

Persuaded that the availability of facilities and mechanisms for the settlement of disputes between States, disputes between States and non-State entities, and disputes involving intergovernmental organizations, fosters harmony and promotes trade and economic development;

Recognizing that the Convention for the pacific settlement of international disputes concluded at The Hague on October 18, 1907 (the "Convention") has for nearly 100 years provided methods of dispute resolution as well as an organizational structure of proven utility, combining the advantages of an established institution with scope for the exercise of a maximum of party autonomy;

Convinced that the essential principles and mechanisms of the Convention will remain valid for the coming years;

Desirous of further strengthening the role of the Permanent Court of Arbitration (PCA) and facilitating the continued adaptation of its organization to present-day requirements, and the discharge of its responsibilities in the most efficient manner;

Desirous also of improving awareness of the valuable contribution that the PCA can make to the resolution of international disputes;

Recognizing that States should not be deterred from recourse to international arbitration or other means of dispute settlement because they find it difficult to allocate funds to meet the costs involved;

Noting with satisfaction that the International Bureau of the PCA has established, with the approval of the Administrative Council of the PCA, the following rules and facilities:

- a) optional rules for arbitrating disputes between two States;
- b) optional rules for arbitrating disputes between two parties of which only one is a State;
- c) optional rules for arbitration involving international organizations and States;
- d) optional rules for arbitration between international organizations and private parties;
- e) optional conciliation rules;
- f) rules of procedure for fact-finding commissions of inquiry;

Welcoming the establishment by the International Bureau, with the approval of the Administrative Council, of a Financial Assistance Fund aimed at helping qualifying States to bear the expense of dispute resolution.

Actions/Decisions:

1. *Recommend* that all States, intergovernmental organizations and other entities consider providing for recourse to the PCA, where appropriate, in dispute resolution agreements and clauses;
2. *Welcome* the establishment by the International Bureau and the Administrative Council of the PCA of any additional optional rules that may prove necessary or desirable;
3. *Recommend* that all States, intergovernmental organizations and other entities make use, when appropriate, of the procedural rules established by the International Bureau of the PCA with the approval of the Administrative Council;
4. *Encourage* the Administrative Council to continue, whenever it considers this necessary, to adapt the practical application of the 1907 Convention to present-day requirements, and to take an active role in promoting and supporting the PCA;
5. *Urge* States that have ratified only the 1899 Convention to consider acceding to the 1907 Convention as soon as possible;
6. *Invite* all States that have not yet acceded to the 1899 or 1907 Conventions to accede to the 1907 Convention as soon as possible;
7. *Recognize* that the provisions of the Hague Conventions of 1899 and 1907 are to be interpreted in such a manner as to be compatible with the Charter of the United Nations;
8. *Welcome* closer cooperation between the PCA and the United Nations, including UN agencies and regional organizations;
9. *Urge* all States, intergovernmental organizations and other entities to contribute, according to their means, to the PCA Financial Assistance Fund, and invite qualifying

States to seek assistance from the Fund in meeting the cost of dispute resolution under the auspices of the PCA;

10. *Welcome* recourse to the PCA by all States, whether parties to the Conventions or not, as well as by intergovernmental organizations and other entities;
11. *Request* the Secretary-General to make available as widely as possible, information about the services available at the PCA, and the procedures to be followed by States, intergovernmental organizations, or other entities desiring to use these services;
12. *Recommend further* that States, intergovernmental organizations and other entities take into account that even without any prior agreement, the parties to a dispute may jointly refer any dispute to the PCA, not only for conciliation and arbitration, but also for assistance in negotiations, fact-finding, good offices or mediation.