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From its Origins to Actuality: The Permanent Court of Arbitration

Maria Belen Moreno (Altra Legal) · Saturday, September 23rd, 2023 · Asociación Latinoamericana de Arbitraje (ALARB)

On July 26, 2023, the [Latin American Arbitration Association](#) (ALARB) organized a [webinar](#) on New Developments of the Permanent Court of Arbitration (PCA). The discussion was introduced by [Claus von Wobeser](#) (Von Wobeser y Sierra, México) and led by [Sandra González](#) (Ferrere, Uruguay) and [Juan Manuel Marchán](#) (PBP, Ecuador), who posed several topics that were discussed and deepened by [Julian Bordaçahar](#) (Senior Legal Counsel and PCA Representative in the Argentine Republic) and [Markel Eguiluz Parte](#) (Assistant Legal Counsel) from the PCA.

“A modern arbitration institution, with an increasingly important role” were the opening remarks expressed by Claus von Wobeser, who briefly referred to the beginnings of the PCA in The Hague and culminated by providing data on the cases initiated last year (which surpassed the previous year’s record). It is also worth noting that of the 204 cases administered over the course of 2022, 26% involved a party from Latin and Central American countries.

The opening remarks led to the following question: where does the PCA come from and where is it going?

General Aspects and Historical Background of the PCA

Julian Bordaçahar provided a general overview of the PCA, covering its historical background with its founding in 1899 when Czar Nicolas II of Russia convened the first Hague Peace Conference in which 26 States participated and expressed their commitment to resolve inter-States disputes peacefully and their need for an international forum.

The PCA, with now 122 Contracting Parties, has developed into a modern, multi-faceted arbitral institution perfectly situated to meet the evolving dispute resolution needs of the international community. It has a three-part organizational structure consisting of an [Administrative Council](#) that oversees its policies and budgets, a panel of independent potential arbitrators known as the [Members of the Court](#), although arbitrators in PCA cases need not come out of that list, and its Secretariat, known as the [International Bureau](#), headed by the Secretary-General.

Markel Eguiluz then delved into the transition that the PCA made from being a platform for disputes exclusively between States to administering mixed arbitrations in 1934. The institution’s

activity was boosted in the second half of the XX century with the development of the UNCITRAL Arbitration Rules, which consolidated the PCA as the main forum for proceedings conducted under such rules.

The peak of Bilateral Investment Treaties (BITs) and Multilateral treaties incorporating arbitration clauses referring to the UNCITRAL Rules also marked the path towards the leading place the PCA now takes in investment disputes.

Mr. Eguiluz emphasized that the PCA also administers contractual arbitrations in different sectors. For instance, the [statistics](#) demonstrate that of the 204 cases the PCA administered in 2022, 112 were investment treaty related and 88 were contract-based arbitrations of different types.

Different Roles of the PCA: Case Management, Appointing and Designating Authority

The PCA provides diverse dispute resolution services, providing administrative support in inter-state, investment and contractual international arbitrations through case administration, acting as the appointing authority, or designating another appointing authority. As Mr. Eguiluz highlighted, the PCA's flexible mandate allows it to administer proceedings of different nature other than arbitration, including conciliations, expert determinations, and fact-finding commissions.

How does the PCA organize its multiple service portfolio? This is a frequently asked question to the PCA. Mr. Bordaçahar explained that the formalization of the PCA's role is not always expressly stated or agreed upon in an arbitration clause. In this sense, the role which the PCA assumes and the extent of its assistance to the parties and tribunals will depend on the users' needs.

In any case, the PCA integral services are performed by its Legal Counsels. The organization typically manages complex, and large or medium cases; thus, each Legal Counsel supervises between 10 to 15 cases simultaneously. Legal Counsels are generally involved from the case registration until the award is rendered. The PCA also offers the full logistic support that organizing hearings requires and offers hearing rooms worldwide free of cost in cases administered by the institution.

Another main task performed by the PCA —certainly not a minor one—is its role as appointing authority or designating the appointing authority. To understand this role, Mr. Eguiluz explained that the appointing authority is an external figure who intervenes whenever issues arise in relation to the tribunal's constitution. That is the case of arbitrator appointments and arbitrator challenges, for example. The PCA can also be called upon to designate another appointing authority in cases in which parties to an arbitration are unable to agree on an appointing authority.

Around [80% of the requests brought to the PCA](#) tend to relate to the appointment of arbitrators, while the remaining 20% pertain to decisions on arbitrator challenges and arbitrator fees, among others.

Ms. Sandra González also raised the interesting question of how the appointments are made. In response, Mr. Bordaçahar explained that the institution generally follows the list-procedure established by the UNCITRAL and the PCA Arbitration Rules. Considering that no one knows the nature of their dispute better than the parties themselves, Mr. Bordaçahar also stressed the importance of obtaining information from them to provide a suitable list of candidates.

Mr. Markel Eguiluz also highlighted the role of the PCA in arbitrator challenges. When a challenge is presented, the Secretary-General invites comments from the parties and the arbitrators. The non-challenging party may respond or adhere to the challenge. The arbitrator, on the other hand, may express his/her comments on the challenge or resign without accepting the grounds of the challenge.

The PCA's appointing authority role is crucial to the integrity of the proceedings, and it is worth noting that all decisions on challenges are duly reasoned and founded. This has been the practice of the institution for more than 15 years.

Valuable Contributions of the PCA

The PCA contributes to the development of international arbitration not only by administering arbitrations and providing assistance when necessary, but the institution also takes part in worldwide initiatives such as the UNCITRAL Working Groups, which cover arbitration-related matters.

In light of this participation, the panelists briefly mentioned the [Draft code of conduct for arbitrators in international investment dispute resolution](#) published a few weeks ago by the UNCITRAL Working Group III, in which the PCA has participated as an observer alongside other institutions. While the arbitral community's reaction to the Code of Conduct is still uncertain, the code's provisions will most certainly affect the nature and extent of disclosures made by arbitrators.

Finally, the PCA's positive influence in countries where they have established an international office is not to be understated. Having a global presence allows the institution's services to be readily accessible to arbitration users in every region. Besides its headquarters in the Peace Palace in The Hague, the PCA has now offices in Buenos Aires, Singapore, Vienna, Mauritius, and Ha Noi.

Specifically, Mr. Bordaçahar referred to the Buenos Aires office's impact on the development of international arbitration in the LatAm region. The Buenos Aires office, which has developed and executed an ambitious outreach program, allows the PCA to service its regional users within the same or similar time range. The outreach program of the Buenos Aires office tackles diverse matters such as the relation with local judges and awareness programs on the benefits of international arbitration, and has even facilitated the interaction with various States in the region by signing several Host Country Agreements with the PCA's Contracting Parties in the LatAm region.

Conclusion


One thing is for sure: the PCA has come a long way. This is a result of several factors, such as the efficient handling of cases by the institution, its intervention in diverse initiatives such as the UNCITRAL Working Groups, and of course, the continuous and steady growth of arbitration as a reliable dispute resolution mechanism for both investment and commercial cases. As arbitration keeps trending positively as a dispute resolution mechanism, actors such as the PCA should keep playing a pivotal role.

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