

# The PCA and Disputes involving International Organizations

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**With the benefit of its experience, the PCA today continues to offer high-quality dispute resolution services in disputes involving international organizations.**

**Since the dawn of multilateral governance at the 1899 Hague Peace Conference, the scope of work for international organizations has expanded exponentially, bringing with it an increased likelihood of these organizations becoming parties to disputes. Since its establishment, the Permanent Court of Arbitration (PCA) has administered over 45 arbitrations involving international organizations.**



The scope of work of international organizations has grown exponentially ever since the dawn of multilateral governance at the 1899 Hague Peace Conference. With increasing activity comes a greater likelihood of international organizations being parties to disputes. The increasing relevance of disputes involving international organizations is reflected in the decision of the International Law Commission in 2022 to include the topic “settlement of international disputes to which international organizations are parties” in its program of work.

Some international organizations have established internal mechanisms for resolving their disputes. For example, the United Nations (the “UN”) has established the UN Dispute Tribunal and the UN Appeals Tribunal, which can be used by staff members of the UN Secretariat to contest administrative decisions. Similarly, staff members of the International Monetary Fund (the “IMF”) have recourse to administrative review, the Grievance Committee, and the IMF Administrative Tribunal. To be sure, such internal mechanisms do not exist for all international organizations and even where these mechanisms exist, they may not be available for the resolution of all kinds of disputes to which international organizations are parties.

The PCA has a long history of administering international dispute resolution proceedings. In the course of its work in international dispute settlement, the PCA has engaged with disputes involving international organizations by (i) administering a variety of such disputes that are not subject to any internal dispute resolution mechanisms and (ii) developing specialized rules for disputes involving international organizations.

Since its establishment, the PCA has administered over 45 arbitrations involving international organizations. There is great diversity in the characteristics of these arbitrations. The counterparties in these disputes have included natural persons, government entities, and private companies. The underlying instruments have included treaties, lease agreements, consultancy contracts, employment agreements, insurance policies, staff regulations, and articles of incorporation of companies. The disputes arise in different sectors, with some in the employment sector, some in the insurance sector and others in the energy sector. Whilst some of these disputes have called for the application of general principles of international commercial law or international law, others have called for the application of the constituent instruments of the relevant international organization and contractual agreements. The breadth and variety of cases at the PCA have honed its expertise in the administering of arbitrations involving international organizations.

While the vast majority of the cases involving international organizations that the PCA has administered have been arbitrations, the PCA has also administered a conciliation proceeding involving an international organization commenced under the 1980 UNCITRAL Conciliation Rules. Further, the PCA acted as registry to the Review Panels established under the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, which adjudicated the Republic of Ecuador’s and Russian Federation’s objections to Conservation and Management Measures adopted by the Commission of the South Pacific Regional Fisheries Management Organisation, an intergovernmental organization.

As early as in 1996, the PCA recognized the need to develop specialized arbitration rules tailored to disputes involving international organizations. It accordingly published its Optional Rules for Arbitration between International Organizations and States (the “IO-State Rules”) and its Optional Rules for Arbitration between International Organizations and Private Parties (the “IO-Private Party Rules”).

The IO-State Rules are based on the 1976 UNCITRAL Arbitration Rules, with changes made to reflect the public international law character of disputes involving international organizations and States. For instance, the rules clarify that the rules of the organization concerned and the law applicable to any agreement or relationship between the parties, and where appropriate, the general principles governing the law of international organizations and the rules of general international law, are to be applied. The IO-State Rules also permit the parties to agree to have the dispute adjudicated by an arbitral tribunal of one, three or five persons (instead of one or three persons under the 1976 UNCITRAL Arbitration Rules). The IO-Private Party Rules are also based on the 1976 UNCITRAL Arbitration Rules, with changes made to better accommodate disputes arising from agreements or relationships between an international organization and a private party. These rules provide that the agreement to arbitrate constitutes a waiver of any immunity from jurisdiction. In addition, the IO-Private Party Rules emphasize flexibility and party autonomy – the parties have complete freedom to agree upon any individual or institution to be appointing authority.

The IO-State and IO-Private Party Rules have been incorporated in a number of constituent instruments of international organizations and other treaties to which international organizations are parties, which are a testament to their utility. For instance, the IO-State Rules are seen in the 2011 Agreement between the Republic of Estonia and the Organisation for the Prohibition of Chemical Weapons (the “OPCW”) on the Privileges and Immunities of the OPCW and the 2010 Agreement between the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization and the United Nations Educational, Scientific and Cultural Organization. The IO-Private Party Rules have been incorporated in treaties such as the 2009 Agreement between the Government of the French Republic and the International Criminal Police Organization concerning the Headquarters of INTERPOL and its Privileges and Immunities in French Territory.

The IO-State and IO-Private Party Rules have been modernized and consolidated in the 2012 PCA Arbitration Rules, which are based on the 2010 UNCITRAL Arbitration Rules. The 2012 PCA Arbitration Rules continue to be used in arbitration agreements involving international organizations, such as the 2017 Agreement between the European Union and the Swiss Confederation on the Linking of their Greenhouse Gas Emissions Trading Systems, the 2019 Square Kilometre Array Observatory Convention, and the 2020 Framework Readiness and Preparatory Support Grant Agreement between The Green Climate Fund and United Nations Environment Programme.

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