

On 29 July, 1899, several Powers represented by their respective Heads of State adopted the Convention For the Pacific Settlement of International Disputes at the Hague, Netherlands, known as the Hague Convention, 1899, "with a view to obviating, as far as possible, recourse to force in the relations between States," and "to use their best efforts to insure the pacific settlement of international differences."¹

As methods of settling international disputes the Convention recommended (a) "Good Offices and Mediation", (b) "International Commissions of Inquiry" and (c) "International Arbitration". The Convention also made provision for a "Permanent Court of Arbitration" with two wings, namely, the Permanent Administrative Council and the International Bureau. The International Bureau was supposed to look after the administrative affairs of the Permanent Court of Arbitration. It was to be composed of various categories of administrative staffs. The Permanent Administrative Council composed of the Diplomating Representatives of the Signatory Powers accredited to the Hague with the Netherlands Minister for Foreign Affairs as the President, would establish the International Bureau and would exercise direction and control over it.

In continuation of the Convention of 1899, the Signatory Powers therein and certain other Powers on invitation met again at the Hague in 1907 and adopted a new Convention on 18 October, 1907 under the same title as the previous Convention. After the ratification of the Convention of 1907, the Convention of 1899 stood replaced.

The Hague Convention, 1907, was virtually a revised version of the Hague Convention, 1899, the main provisions of the earlier remaining unchanged in the later.

According to the Hague Convention, 1907, the Permanent Court of Arbitration, although designated as a Court, is not a court in the strict sense. It was set up as an arbitral institution for facilitating resolution of all types of international disputes, if the parties agreed, through the methods of exercising "Good Office", "Mediation", "International Commissions of Enquiry" and "Arbitration", without recourse to force. Unfortunately, the Convention was turned into a dead letter no sooner than it was adopted by the Signatory Powers, Germany, France, the United Kingdom, Italy, Japan, China, the United States, Russia etc. by engaging themselves in two Great Wars and numerous regional military conflicts. In fact, after establishment of the League of Nations after World War I and the United Nations Organization after World War II, the Permanent Court of Arbitration lost its significance as an instrument for pacific settlement of disputes between states – particularly, disputes of a political nature. Nevertheless, the PCA continued its existence and for all practical purposes was used by the Signatory Powers (and also those who are not parties to the Convention) as an arbitration centre for facilitating, and providing logistics for, arbitration in disputes of purely commercial nature between States, between States and private parties and also between private parties provided the parties agreed to select the PCA as the place of arbitration.

The PCA consists of three organs which are as follows :-

- 1) The International Bureau which is the secretariat of the PCA headed by a Secretary-General. It, if approached, assists the parties to a dispute, on payment of costs, by undertaking the administrative functions associated with any settlement process, particularly, arbitration.

(1) See Article I of the Hague Convention, 1899.

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(1) See Article 1 of the Hague Convention, 1899.

- 2) The Administrative Council is composed of the diplomatic representatives of the States-Parties accredited to the Hague. It supervises the work of the International Bureau.
And,
- 3) The Members of the Court composed of members nominated by the States-Parties. Each State-Party may nominate four members. From among the Members, arbitrators may be nominated in any arbitration proceedings for settling disputes.

The PCA has permanent observer status at the United Nations.

The Members of the PCA are also empowered, acting in "national groups", to nominate candidates for electing Judges of the International Court of Justice whenever vacancy occurs therein.

The Secretary - General of the International Bureau may be asked by a party to an arbitration agreement to nominate an "appointing authority" for appointing arbitrators in case of deadlock in making such appointments.² (See Article 6 (2) of the United Nations Commission on International Trade Law/Arbitration Rules (UNCTRAL Arbitration Rules).

The International Bureau also acts, on payment of costs, as a registry for arbitral tribunals and commissions and serves as the official channel of communication between the parties to a dispute and performs all sorts of administrative functions relieving the parties of the administrative burdens associated with the proceeding, if the parties seek such assistance.

There are arrangements for court-room, retiring-rooms and other facilities for the parties and the members of the arbitral tribunals/commissions.

There is also a well-equipped library at the PCA.

There is also an information and service centre at the International Bureau.

The International Bureau also acts as a research centre for international arbitration and other methods of international dispute management.

The PCA maintains a Financial Assistance Fund from which developing countries may be assisted in meeting specified categories of costs associated with dispute resolution proceedings.

Any State acceding to the Hague Convention, 1907, automatically becomes a Member of the Permanent Court of Arbitration and is entitled to avail of the facilities listed above.

As such, by acceding to the convention Bangladesh becomes a Member of the PCA and also becomes entitled to the same facilities as above.

The annual subscription which Bangladesh will have to pay as a Member will be around US\$ 5000.00.

In many countries of the world including some of the neighbouring countries of Bangladesh, (such as, India, Pakistan, Sri Lanka, Hong Kong, Indonesia, Singapore

(2) See Article 6(2) of the United Nations Commission on International Trade Law/Arbitration Rules (UNCTRAL Arbitration Rules.)

etc.) more than one arbitral institution have been established with the same purpose and facilities as the P.C.A. These are all private enterprises. In Bangladesh, there is no such institution.

But, for Bangladesh, to select any of the arbitral institutions in any of the neighbouring countries instead of the PCA, as place of arbitration, is likely to be more cost-effective.

It may, however, be pointed out that 86 States, including India, Pakistan and Sri Lanka, are parties to the Convention. (till 1 July, 1998).

There is no constitutional or legal obstacle to accession to the Convention by Bangladesh.

The concrete facilities that may be derived by Bangladesh by acceding to the Convention have been listed above. Whether it will be worthwhile to accede to the Convention for availing of those benefits does not involve any legal or constitutional issue and as such, it is for the Government to take a decision in this matter and the Commission, accordingly, refrains from giving any opinion in this respect.

K. Hossain
24/9/98

(Justice Kemaluddin Hossain)
Chairman, Law Commission.

Amin-ur-Rahman Khan
24-9-98

(Justice Amin-ur-Rahman Khan)
Member-1, Law Commission.

Naimuddin Ahmed

(Justice Naimuddin Ahmed)
Member-2, Law Commission.

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