

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1999 Nr. 68

A. TITEL

*Verdrag inzake de zetel van het Permanente Hof van Arbitrage;
's-Gravenhage, 30 maart 1999*

B. TEKST

**Agreement concerning the Headquarters of the Permanent
Court of Arbitration**

between
the Kingdom of the Netherlands,
and
the Permanent Court of Arbitration

Whereas the Conventions for the Pacific Settlement of International Disputes, establishing the Permanent Court of Arbitration were concluded on 29 July, 1899 and 18 October, 1907, and the Kingdom of the Netherlands is a Contracting Power to both Conventions,

Whereas the seat of the International Bureau of the Permanent Court of Arbitration is The Hague, Kingdom of the Netherlands, pursuant to Article 22, paragraph 1, of the Convention of 1899 and Article 43 of the Convention of 1907,

Having regard to the provisions set forth in Article 24 of the 1899 Convention and Article 46, paragraph 4, of the 1907 Convention, establishing, respectively, the diplomatic privileges and immunities of the Members of the Court and members of Tribunals,

Having regard to exchanges of letters in 1930, 1937 and 1972–1974 between the International Bureau of the Permanent Court of Arbitration and the Ministry of Finance of the Netherlands in which provisions were made for exemption from direct tax in respect of salaries for the Secretary-General and the personnel of the Permanent Court of Arbitration, including Netherlands citizens,

Whereas the Parties first named above desire to conclude a more comprehensive agreement,

They have therefore agreed as follows:

Article 1

Definitions

1. "1899 Convention" shall mean the Convention for the Pacific Settlement of International Disputes, concluded at The Hague on 29 July, 1899, and "1907 Convention" shall mean the Convention for the Pacific Settlement of International Disputes, concluded at The Hague on 18 October, 1907;
2. "PCA" shall mean the International Bureau of the Permanent Court of Arbitration;
3. "Government" shall mean the Government of the Kingdom of the Netherlands;
4. "Appropriate Authorities" shall mean such State, municipal or other authorities of the Kingdom of the Netherlands as may be appropriate in the context of the relevant provisions of this Agreement and in accordance with the laws and customs applicable in the Kingdom of the Netherlands;
5. "Parties" shall mean the PCA and the Kingdom of the Netherlands;
6. "Headquarters" shall mean the area and any building, including conference facilities, parts of buildings, land or facilities ancillary thereto, irrespective of ownership, used by the PCA on a permanent basis or from time to time, to carry out official functions;
7. "PCA Proceedings" shall mean dispute resolution administered by or under the auspices of the PCA, whether or not pursuant to the 1899 Convention, the 1907 Convention, or any of the PCA's optional rules of procedure, in which at least one party is a State, a State-controlled entity, or an intergovernmental organization;
8. "PCA Adjudicator" shall mean an arbitrator, mediator, conciliator, or member of a commission of inquiry taking part in a hearing, meeting or other activity in relation to PCA Proceedings;
9. "Participant in Proceedings" shall mean a witness, expert, counsel, party, agent or other party representative, taking part in a hearing, meeting or other activity in relation to PCA Proceedings;
10. "PCA Meeting" shall mean any meeting of any of the organs or subsidiary organs of the PCA, or any internal conference or other gathering convened by the PCA or under its sponsorship;

11. "Secretary-General" shall mean the head of the International Bureau of the PCA as set out in Article VIII of the Rules of Procedure of the Administrative Council and Article I of the Rules Concerning the Organization and Internal Working of the International Bureau of the Permanent Court of Arbitration, or in his absence the First Secretary as established in Article IV of the aforementioned rules;

12. "Officials of the PCA" shall mean the Secretary-General and all members of the staff of the PCA;

13. "Property" shall mean all property, assets and funds, belonging to the PCA or held or administered by the PCA in furtherance of its functions, including any funds held on deposit for the benefit of PCA Proceedings and any Provident Fund to be established by or conducted under the authority of the PCA, and all income of the PCA;

14. "Archives of the PCA" shall mean all records, correspondence, documents, manuscripts, computer and media data, photographs, films, video and sound recordings belonging to or held by the PCA or any of its staff members in an official function, or in the possession of any PCA Adjudicator or Participant in Proceedings, and any other material which the Secretary-General and the Government may agree shall form part of the archives of the PCA;

15. "The Vienna Convention" shall mean the Vienna Convention on Diplomatic Relations of 18 April 1961.

Article 2

Legal Personality

The PCA shall possess full legal personality. In particular, it shall have the capacity to contract, to acquire and dispose of immovable and movable property; and to institute legal proceedings.

Article 3

Immunity from Legal Process; Immunity of Property from Other Actions

1. The PCA, and its Property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except in the case of:

- a) express waiver by the PCA of immunity in a particular case;
- b) civil action by a third party for damages arising out of an accident caused by a motor vehicle belonging to, or operated on behalf of, the PCA where these damages are not recoverable from insurance.

2. The Headquarters of the PCA shall be inviolable. The Property of the PCA, wherever situated, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether

by executive, administrative, judicial or legislative action except in so far as the PCA shall have expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

3. The Archives of the PCA, wherever situated, shall be inviolable at all times.

Article 4

The Headquarters

The Appropriate Authorities shall take whatever reasonable action may be necessary, within their powers, to ensure that the PCA shall not be dispossessed of all or any part of the Headquarters. To the extent necessary, the Kingdom of the Netherlands shall either facilitate the acquisition on its territory, in accordance with its laws, by the PCA of premises necessary for its Headquarters or assist the latter in obtaining accommodation in some other way.

Article 5

Law and Authority in the Headquarters

1. The Netherlands authorities may not enter the Headquarters, except with the consent of, or given on behalf of, the Secretary-General. Any person who enters the Headquarters with the permission of the Secretary-General shall, if so requested by or on behalf of the Secretary-General, leave the Headquarters immediately.

2. This Article shall not prevent the reasonable application of fire protection regulations by the Appropriate Authorities. In addition in any situation posing an immediate threat to life or property, the consent of the Secretary-General to entry into the Headquarters shall be presumed if he or his authorised representative cannot be reached in time.

3. Service of legal process may take place within the Headquarters only with the prior consent of, and under conditions approved by, the Secretary-General.

4. The Secretary-General shall prevent the Headquarters from being used to harbour persons who are:

- a) avoiding arrest under any law of the Kingdom of the Netherlands;
- b) endeavouring to evade service of legal process; or
- c) wanted by the Government for extradition or expulsion to another State.

5. The PCA shall have the right to use a flag and emblem, and to fly its flag at the Headquarters.

Article 6

Protection of the Headquarters

1. The Appropriate Authorities shall exercise due diligence to ensure that the security and tranquillity of the Headquarters are not impaired by any person or group of persons attempting unauthorised entry into, or creating disturbances in, the immediate vicinity of the Headquarters. As may be required for this purpose, the appropriate authorities shall provide adequate police protection on the boundaries and in the vicinity of the Headquarters.

2. If so requested by the Secretary-General, the Appropriate Authorities shall provide a sufficient number of police for the preservation of law and order in the Headquarters.

Article 7

Exemption of the PCA and its Property from Taxes and Duties

1. Within the scope of its official activities, the PCA shall be exempt from all direct taxes, whether levied by national, provincial or local authorities.

2. Within the scope of its official activities, the PCA shall be exempt from:

- a) motor vehicle tax (*motorrijtuigenbelasting*);
- b) tax on passenger motor vehicles and motorcycles (*BPM*);
- c) value-added tax (*omzetbelasting*) paid on all goods and services supplied on a recurring basis or involving considerable expenditure;
- d) excise duties (*accijnzen*) included in the price of alcoholic beverages and hydrocarbons;
- e) import taxes and duties (*belastingen bij invoer*);
- f) insurance tax (*assurantiebelasting*);
- g) real property transfer tax (*overdrachtsbelasting*);
- h) any other taxes and duties of a substantially similar character to the taxes and duties provided for in this paragraph, imposed by the Netherlands subsequent to the date of signature of this Agreement.

3. The exemptions provided for in subparagraphs 2c), 2d), 2f), 2g) and 2h) of this Article may be granted by way of a refund under conditions to be agreed upon by the PCA and the Government.

4. No exemption shall be accorded in respect of taxes and duties which represent charges for specific services rendered.

5. Goods acquired or imported under the terms set out in paragraph 2 of this Article shall not be sold, let out, given away or otherwise disposed of, except in accordance with conditions agreed upon with the Government.

Article 8

Transit and Residence

1. The Government shall take all reasonable measures to facilitate and allow the entry into and sojourn in the territory of the Kingdom of the Netherlands of the persons listed below, whatever their nationality:

- a) PCA Adjudicators and their partners;
- b) Officials of the PCA, their partners and dependent members of their household;
- c) Participants in Proceedings;
- d) Persons attending PCA Meetings.

2. The Government shall take all reasonable measures to ensure that any visas which may be required for any of the persons referred to in this Article are issued as promptly as possible in order to allow the timely conduct of official business with the PCA. Visas shall be granted without charge to those persons referred to under 1a) b) and c), above.

3. No activity performed by any person referred to in this Article in his capacity with respect to the PCA as indicated in paragraph 1 of this Article shall constitute a reason for preventing his entry into or his departure from the territory of the Kingdom of the Netherlands or for requiring him to leave such territory.

Article 9

Immunities of PCA Adjudicators and Participants in Proceedings

1. PCA Adjudicators shall, in the exercise of their duties, enjoy such immunities as are accorded to diplomatic agents pursuant to the Vienna Convention.

2. Participants in Proceedings shall enjoy immunity from criminal, civil and administrative jurisdiction in respect of acts performed in the fulfilment of their duties in PCA Proceedings.

Article 10

Privileges and Immunities of the Secretary-General and Other Officials of the PCA

1. Except with respect to (i) a motor traffic offence committed by an Official of the PCA, and (ii) a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to or driven by an Official of the PCA:

- a) The Secretary-General shall be accorded the privileges and immunities, exemptions and facilities accorded to the head of a diplomatic mission pursuant to the Vienna Convention;

b) Officials of the PCA other than the Secretary-General shall be accorded the same privileges and immunities, exemptions and facilities as the Government accords to members of diplomatic missions of comparable rank pursuant to the Vienna Convention.

2. In addition to the immunities specified in paragraph 1 of this Article, Officials of the PCA shall enjoy within and with respect to the Kingdom of the Netherlands the following privileges and immunities:

a) exemption from taxation in respect of the salaries and emoluments paid by the PCA with the exception of pensions and annuities paid to former officials of the PCA and their dependants;

b) the same protection and repatriation facilities with respect to themselves, their partners, their dependent relatives and other members of their households as are accorded in time of international crisis to comparably-ranked members of the staffs of diplomatic missions accredited to the Kingdom of the Netherlands.

Article 11

Notification

1. The PCA shall promptly notify the Government of:

a) the appointment of the Secretary-General, the First Secretary, and other Officials of the PCA, their arrival and their final departure, or the termination of their functions with the PCA;

b) the arrival and final departure of the partners and dependant members of the households of the persons referred to in subparagraph 1a) of this Article and, where appropriate, the fact that a person has ceased to form part of the household.

2. The Government shall issue to the Secretary-General, the First Secretary and to other Officials of the PCA and their partners and dependant members of their household an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to all authorities of the Kingdom of the Netherlands.

Article 12

Social Security

1. In the event that the PCA shall have established its own social security system or shall adhere to a social security system offering comparable coverage to the coverage under Netherlands' legislation, the PCA and its staff members and other employees to whom the aforementioned scheme applies, shall be exempt from social security provisions in the Netherlands, unless the staff members and other employees to whom the aforementioned scheme applies take up a gainful activity in the Netherlands.

2. The provisions of paragraph 1 of this Article shall apply, *mutatis mutandis*, to the dependant members of the families forming part of the households of the persons referred to in paragraph 1, unless they are employed otherwise than by the PCA or self-employed or unless they receive Netherlands' social security benefits.

Article 13

Employment

1. Persons who have been recognised by the Government as

- a) partners of Officials of the PCA; or
- b) dependent children of Officials of the PCA who have not yet reached the age of 18 shall be authorised by the Appropriate Authorities to engage in gainful employment for the duration of the employment of the said Officials.

2. Persons who obtain employment under paragraph 1 of this Article shall have no immunity from criminal, civil and administrative jurisdiction with respect to matters arising in the course of or in connection with such employment provided that measures of execution can be taken without infringing the inviolability of their person or their residence.

3. Employment referred to in paragraph 1 of this Article shall be in accordance with the laws of the Kingdom of the Netherlands.

Article 14

Additional Provisions on Privileges and Immunities

1. The privileges and immunities granted under the provisions of this Agreement are conferred in the interest of the PCA and not for the personal benefit of the individuals themselves. It is the duty of the PCA and all persons enjoying such privileges and immunities to observe in all respects the laws and regulations of the Kingdom of The Netherlands.

2. This Agreement shall apply irrespective of whether the Government maintains or does not maintain diplomatic relations with the State of origin of the person concerned and irrespective of whether the State of origin of the person concerned grants similar privileges or immunities to the diplomatic envoys or citizens of the Kingdom of the Netherlands.

3. The privileges and immunities granted to Officials of the PCA under the provisions of this Agreement are granted on the understanding that the PCA shall waive the immunity of the persons concerned in any circumstances in which the PCA considers that such immunity would impede the course of justice, and whenever it can be waived without prejudice to the purpose for which it was granted.

4. The PCA shall cooperate at all times with the appropriate authorities of the Kingdom of the Netherlands to facilitate the proper administration of justice and shall prevent any abuse of the privileges and immunities granted under the provisions of this Agreement by Officials of the PCA.

5. Should the Government consider that an abuse by an Official of the PCA or an expert of a privilege or immunity conferred by this Agreement has occurred, the Secretary-General shall, upon request, consult with the appropriate Netherlands authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory to the Secretary-General and to the Government, the matter shall be determined in accordance with the procedures set out in Article 16, paragraph 2 of this Agreement.

6. The Secretary-General shall have the right and the duty to waive the immunity of any Official of the PCA in cases in which the immunity would impede the course of justice and can be waived without prejudice to the interests of the PCA. In respect of the Secretary-General, the PCA has a similar right and duty, which shall be performed by the Administrative Council.

Article 15

International Responsibility of the Kingdom of the Netherlands

The Kingdom of the Netherlands shall not incur by reason of the location of the Headquarters of the PCA within its territory any international responsibility for acts or omissions of the PCA or of Officials of the PCA acting or abstaining from acting within the scope of their functions, other than the international responsibility which the Kingdom of the Netherlands would incur on the same footing as other Contracting Powers to the 1899 Convention and/or the 1907 Convention.

Article 16

Settlement of Disputes

1. The PCA shall make provisions for appropriate methods of settlement of:

- a) disputes arising out of contracts and disputes of a private law character to which the PCA is party; and
- b) disputes involving an Official of the PCA who, by reason of his official position, enjoys immunity, if such immunity has not been waived by the PCA.

2. Any dispute, controversy or claim arising between the PCA and the Government out of or relating to the interpretation, application or performance of this Agreement, including its existence, validity or termina-

tion, or any question affecting the Headquarters or the relationship between the PCA and the Government, which is not settled amicably within six months of the date on which one Party notifies the other of the existence of such dispute, shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States (the “Rules”), as in force on the date of signature of this Agreement. The number of arbitrators shall be one. The language to be used in the arbitral proceedings shall be English. The appointing authority shall be the Netherlands Arbitration Institute. In any such arbitration proceedings, the registry, archive and secretariat services of the PCA, referred to in Article 1, paragraph 3 and Article 25, paragraph 3 of the Rules, will not be available, and the PCA shall not be empowered to request, hold or disburse deposits of costs as provided in Article 41, paragraph 1 of the Rules.

Article 17

Operation of this Agreement

1. This Agreement shall be construed in the light of its primary purpose of enabling the PCA at its Headquarters in the Kingdom of the Netherlands fully and efficiently to discharge its responsibilities and fulfil its purpose.
2. Whenever this Agreement imposes obligations on the appropriate authorities of the Kingdom of the Netherlands, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government.

Article 18

Termination of the Agreement

This Agreement may be terminated by either Party by giving notice to the other Party at least two years in advance of the effective date of termination.

Article 19

Amendments

1. This Agreement may be amended at any time.
2. Any such amendment shall be agreed by mutual consent and shall be effected by an Exchange of Notes.
3. Consultations with respect to amendment of this Agreement may be entered into by the PCA and the Government at the request of either Party.

Article 20

Entry into Force

1. This Agreement shall enter into force on the day after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

2. With respect to the Kingdom of the Netherlands, this Agreement shall apply to the part of the Kingdom in Europe only.

DONE at The Hague on 30 March 1999, in two originals in the English language.

For the Kingdom of the Netherlands

(sd.) J. J. JONKER ROELANTS

For the Permanent Court of Arbitration

(sd.) P. J. H. JONKMAN

D. PARLEMENT

Het Verdrag behoeft ingevolge artikel 7, onderdeel a, van de Rijkswet goedkeuring en bekendmaking verdragen niet de goedkeuring der Staten-Generaal, alvorens het Koninkrijk aan het Verdrag kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel 20 in werking treden op de dag nadat beide Partijen elkaar schriftelijk hebben medegedeeld dat aan de wettelijke vereisten voor de inwerkingtreding van het Verdrag is voldaan.

J. GEGEVENS

Het Permanente Hof van Arbitrage is ingesteld bij het op 29 juli 1899 te 's-Gravenhage tot stand gekomen Verdrag voor de vreedzame beslechting van internationale geschillen. Tekst en vertaling van dat Verdrag zijn bij Koninklijk besluit van 19 september 1900 bekendgemaakt in *Stb.* 163; de tekst is tevens geplaatst in *Trb.* 1963, 157; zie ook, laatstelijk, *Trb.* 1981, 91. Het Permanente Hof van Arbitrage is gehandhaafd bij het gelijknamige Verdrag van 's-Gravenhage, 18 oktober 1907. Tekst en vertaling van laatstgenoemd Verdrag zijn bij Koninklijk besluit van 22 februari 1910 bekendgemaakt in *Stb.* 73; de tekst is tevens geplaatst in *Trb.* 1963, 158; zie ook, laatstelijk, *Trb.* 1981, 96.

Van het op 18 april 1961 tot stand gekomen Verdrag van Wenen inzake diplomatiek verkeer, naar welk Verdrag in artikel 1, vijftiende lid, van het onderhavige Verdrag wordt verwezen, zijn de Engelse en Franse tekst geplaatst in *Trb.* 1962, 101 en de vertaling in *Trb.* 1962, 159; zie ook, laatstelijk, *Trb.* 1994, 212.

Uitgegeven de *vijftiende* april 1999.

De Minister van Buitenlandse Zaken,

J. J. VAN AARTSEN