

DUTCH FOREIGN POLICY AND THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

An Exploratory Study Commissioned by the Policy and Operations
Evaluation Department of the Netherlands Ministry of Foreign Affairs

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LIST OF ABBREVIATIONS

| | |
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| COE | Council of Europe |
| ICJ | International Court of Justice |
| ITLOS | International Tribunal for the Law of the Sea |
| MFA | Ministry of Foreign Affairs |
| OECD | Organisation for Economic Co-operation and Development |
| OPCW | Organisation for the Prohibition of Chemical Weapons |
| OSCE | Organization for Security and Co-operation in Europe |
| PCA | Permanent Court of Arbitration |
| PCIJ | Permanent Court of International Justice |
| Res. | Resolution |
| UNCLOS | United Nations Convention on the Law of the Sea |
| UNGA | United Nations General Assembly |
| UNSC | United Nations Security Council |
| UNSG | United Nations Secretary-General |
| WTO AB | Appellate Body of the World Trade Organization |

I. INTRODUCTION

The present document is an exploratory study commissioned by the Policy and Operations Evaluation Department of the Netherlands Ministry of Foreign Affairs (MFA) in relation to its on-going evaluation of Dutch efforts to promote the development of the international legal order.¹ The following assessment zeroes in on Dutch foreign policy concerning the peaceful settlement of international disputes, with a focus on the International Court of Justice (ICJ) and the Permanent Court of Arbitration (PCA), covering the period 2009-2014. This study draws upon a variety of publically available sources (e.g. legal literature and official documentation of inter-governmental organizations), internal documents of the Government of the Netherlands and interviews conducted by the author.

The Netherlands' efforts in the area of peaceful dispute settlement are inextricably linked to Article 90 of the Constitution of the Kingdom of the Netherlands (2008), which stipulates that “[t]he Government shall promote the development of the international legal order.”² This duty is perceived as an important mission within the Dutch Government and has formed the impetus for initiatives to bolster the rules, principles and procedures of international law.³ Although Article 90 of the Constitution is couched in broad terms, historical analysis reveals that the pacific resolution of international disputes belongs to the very core of this provision’s scope.⁴

Contemporary policy documents consolidate the connection between the duty to promote the development of the international legal order and peaceful dispute

¹ Policy and Operations Evaluation Department of the Netherlands Ministry of Foreign Affairs, ‘Vreedzame geschillenbeslechting en het tegengaan van straffeloosheid. Beleidsdoorlichting van de Nederlandse inzet voor de internationale rechtsorde binnen begrotingsartikel 1.1 van de Memorie van Toelichting. Terms of reference’, <https://www.rijksoverheid.nl/documenten/rapporten/2015/04/13/iob-beleidsdoorlichting-vreedzame-geschillenbeslechting-en-het-tegengaan-van-straffeloosheid>.

² Constitution of the Kingdom of the Netherlands (2008), <http://www.government.nl/documents-and-publications/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008.html>.

³ On this topic see Wetenschappelijk Raad voor het Regeringsbeleid, *Aan het buitenland gehecht: over verankering en strategie van Nederlands buitenlandbeleid* (Amsterdam University Press, 2010), pp. 68-70.

⁴ L.F.M. Besselink, ‘The Constitutional Duty to Promote the Development of the International Legal Order: The Significance and Meaning of Article 90 of the Netherlands Constitution’, 34 *Netherlands Yearbook of International Law* (2003), pp. 102-103.

settlement. The *International Security Strategy*⁵, which determines policy focuses based on trends in the international security environment⁶, formulates three strategic interests. One such interest is the maintenance of an effective international legal order. A direct link is thus forged between the existence of this order and the ability for States to settle their disputes in a peaceful manner.⁷ Moreover, the *International Security Strategy* underlines the Netherlands' advocacy of broader recognition of the ICJ's jurisdiction.⁸

The annual reports and budgets of the Dutch MFA shed further light on the role of peaceful dispute settlement in the country's foreign policy. On a general level, the strengthening of the international legal order and respect for human rights are given pride of place as the first policy article among several.⁹ Arbitration and mediation are mentioned as methods that the Netherlands wishes to promote.¹⁰ The ICJ's role in conflict prevention is recognized¹¹, while the Netherlands has expressed its intention to emphasize its promotion of the ICJ and the PCA.¹²

The exploratory study is structured as follows. After providing an outline of the different means of international dispute settlement at the disposal of disputant parties, attention will be paid to efforts undertaken by the Dutch Government in the period under review with respect to the ICJ and the PCA. Consideration will be given to acts of public diplomacy and less visible endeavours intended to present both institutions and/or promote their use. The study subsequently centres on recent cases in which the Netherlands has appeared before the ICJ and an arbitral tribunal under the aegis of the PCA. This is followed by a survey of initiatives through which the Netherlands has contributed to the working of these adjudicatory bodies. Finally, a brief concluding chapter will identify areas where there is room for improvement.

⁵ *International Security Strategy: A Secure Netherlands in a Secure World* (2013).

⁶ *Id.*, p. 2.

⁷ *Id.*, p. 9.

⁸ *Id.*, p. 9.

⁹ See for instance: *Rijksjaarverslag 2014 V Buitenlandse Zaken*, pp. 30-32; *Rijksjaarverslag 2013 V Buitenlandse Zaken XVII Buitenlandse Handel en Ontwikkelingssamenwerking*, pp. 29-30; *Rijksjaarverslag 2012 V Buitenlandse Zaken*, pp. 23-26; *Rijksjaarverslag 2011 V Buitenlandse Zaken*, pp. 19-24.

¹⁰ *Rijksbegroting 2014 V Buitenlandse Zaken*, p. 7.

¹¹ *Rijksbegroting 2013 V Buitenlandse Zaken*, p. 12.

¹² *Id.*, p. 34.

II. PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

Simply put, a dispute arises when two persons disagree on points of law, fact, or policy. In the broadest sense, a dispute is “international” when the parties involved, be it governments, organizations, companies or even private individuals, are located in different parts of the world. The current report, however, primarily addresses disputes to which sovereign States are parties.¹³

The Charter of the United Nations (UN) is the founding document of the organization.¹⁴ Created in response to the horrors of the past, the UN’s chief goal is to avert war. The settlement of international disputes takes centre stage in the struggle for peace. According to Article 1 of the UN Charter, the first purpose of the organization is “[t]o maintain international peace and security, and to that end: [...] to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or *settlement of international disputes* or situations which might lead to a breach of the peace” (emphasis added).

In the pursuit of its purposes, the UN is guided by a set of principles. A core principle is the duty incumbent upon all UN Member States¹⁵ to settle their international disputes by peaceful means, as stipulated in Article 2 (3) of the Charter and reaffirmed in landmark resolutions of the UN General Assembly (UNGA).¹⁶ This obligation should be read in conjunction with Article 2 (4) of the Charter, the prohibition on the use of force¹⁷, and the rules regulating the competences of the UN

¹³ J.G. Merrills, *International Dispute Settlement* (5th ed., Cambridge University Press, 2011), p. 1.

¹⁴ Charter of the United Nations, 26 June 1945.

¹⁵ This duty also forms part of customary international law and therefore extends to States regardless of UN membership.

¹⁶ See e.g. UNGA Res. 37/10, Annex, *Manila Declaration on the Peaceful Settlement of International Disputes* (1982); UNGA Res. 2625 (XXV), Annex, *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations* (1970).

¹⁷ The two universally recognized exceptions to this prohibition are: (1) the right to self-defence as laid down in Art. 51 UN Charter and (2) enforcement action authorized by the UN Security Council under Chapter VII UN Charter.

Security Council (UNSC), the UNGA and the UN Secretary-General (UNSG) in the field of international peace and security.

The UN Charter does not merely proclaim that disputes are to be settled peacefully; techniques are listed from which parties may choose to resolve their disagreement. Article 33 (1) encourages the use of the following methods: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement and recourse to regional organizations. This enumeration is not exhaustive (e.g. “good offices” is not listed) and parties are free to seek a solution through other methods. It should be noted that the distinction between the various techniques is not clear-cut in practice. This overview therefore presents ideal types.¹⁸

1. Diplomatic means

The means of dispute settlement can be placed on a scale with an increasing order of intrusiveness, starting with the (non-binding) diplomatic (or political) means of dispute settlement (negotiation, good offices, mediation, inquiry and conciliation).¹⁹ Negotiation²⁰ is the first and foremost method parties will turn to in order to settle their dispute. Parties discuss their differences directly with one another, typically through the traditional diplomatic channels, although other formats are popular (e.g. joint commissions, talks within the framework of an international institution etc.). Consultation, a form of negotiation whereby a government discusses a planned course of action potentially harmful to another State, aims to prevent new disputes from arising.²¹ The advantages of conducting direct talks is that they are less complex and costly in addition to being more flexible than other available methods. A downside to negotiations, particularly between great and small powers, is the lack of corrective mechanisms to deal with the unequal status of parties.

¹⁸ On the distinction between the peaceful settlement of disputes and conflict prevention, see R. Mani, ‘Peaceful Settlement of Disputes and Conflict Prevention’, in T.G. Weiss & S. Daws (eds.), *The Oxford Handbook on the United Nations* (Oxford University Press, 2007), pp. 300-322.

¹⁹ A. Pellet, ‘Peaceful Settlement of International Disputes’, in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2013, para. 38, opil.ouplaw.com.

²⁰ See UNGA Res. 53/101, *Principles and Guidelines for International Negotiations* (1998).

²¹ Merrills, *o.c.*, pp. 2-3.

Although most international disputes are resolved through the preferred method of negotiation, direct communication is not always feasible, especially when parties are not on speaking terms (e.g. severance of diplomatic relations).²² Fortunately, States may seek the assistance of a third party. “Good offices” is the practice by which an intermediary provides an indirect channel of communication between the parties. The aim of this procedure is to bring the parties together so they can find an adequate solution between themselves.²³ An illustration would be the good offices tendered by the UNSC in the 1940s to help put an end to the hostilities between the Netherlands and Indonesia.²⁴

In contrast to the passive role played by the person providing good offices, the mediator is an active third party. In mediation, the third party will try to help the parties reach a solution by making suggestions and submitting proposals. Tasks may include the elucidation of the facts of the dispute, suggesting terms of a fair settlement and assisting in the implementation of a settlement. A famous example is the successful papal mediation between Argentina and Chile over the Beagle Channel dispute from the late 1970s onwards.²⁵ Over the past years, mediation has grown in importance and popularity.²⁶

Inquiry or fact-finding is an “activity designed to obtain detailed knowledge of the relevant facts of any dispute”.²⁷ To this end, commissions of inquiry or fact-finding missions may be established to carry out impartial investigations. A large number of bilateral and multilateral treaties contain detailed fact-finding procedures. Inquiry is often resorted to in combination with other means of peaceful dispute settlement when the need arises to gather all information necessary to determine the facts that lie at the heart of the dispute.²⁸ The fact-finding mission created by the Organisation for

²² *Id.*, p. 21.

²³ Art. IX American Treaty on Pacific Settlement (Pact of Bogotá), 30 April 1948.

²⁴ United Nations Office of Legal Affairs – Codification Division (ed.), *Handbook on the Peaceful Settlement of Disputes between States* (United Nations, 1992), p. 37.

²⁵ F. Orrego Vicuña, ‘Mediation’, in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2010, paras. 1-2 and 27-30, opil.ouplaw.com.

²⁶ UNGA Res. 65/283, *Strengthening the Role of Mediation in the Peaceful Settlement of Disputes, Conflict Prevention and Resolution* (2011); Report of the Secretary-General, *Enhancing Mediation and its Support Activities*, UN Doc. S/2009/189 (2009).

²⁷ See UNGA Res. 46/59, Annex, *Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security* (1991), para. 2.

²⁸ *Handbook on the Peaceful Settlement of Disputes between States*, o.c., p. 24.

the Prohibition of Chemical Weapons (OPCW) in 2014 to investigate allegations of the use of chlorine for hostile purposes in Syria is a recent case in point.²⁹

Yet another means of international dispute settlement involving a third party is conciliation, which exhibits characteristics of both inquiry and mediation. An individual or a commission is mandated to hear the parties, elucidate the facts of the dispute and submit proposals for ending the disagreement. Recourse to conciliation is desirable when parties are entangled in what is essentially a legal dispute but wish to reach a solution based on equity.³⁰ The “compliance procedures” found in contemporary environmental agreements, such as the 1997 Kyoto Protocol³¹, can be considered a special type of conciliation.³²

Resort to regional agencies or arrangements, as it is phrased in Article 33 (1) of the UN Charter, is not a distinct method of international dispute settlement. Rather, States are encouraged to make use of the various dispute mechanisms available within the regional bodies and organizations to which they belong.³³ The Organization for Security and Co-operation in Europe (OSCE), for instance, prides itself on the many means at its disposal to reduce tensions between its Member States: the Court of Conciliation and Arbitration, directed conciliation, the Valetta Mechanism, etc.³⁴

2. Legal means

A common trait among the diplomatic methods canvassed above is that the parties do not have to accept the outcome. The next category of dispute settlement mechanisms, the so-called jurisdictional or legal means (arbitration and judicial settlement), differs

²⁹ OPCW, ‘OPCW to Undertake Fact-Finding Mission in Syria on Alleged Chlorine Gas Attacks’, 29 April 2014, <https://www.opcw.org/news/article/opcw-to-undertake-fact-finding-mission-in-syria-on-alleged-chlorine-gas-attacks/>.

³⁰ J. Collier & V. Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures* (Oxford University Press, 1999), pp. 29-31.

³¹ Art. 18 Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11 December 1997.

³² Merrills, *o.c.*, pp. 78-79.

³³ See also Art. 52 UN Charter.

³⁴ See *OSCE Mechanisms and Procedures: Summary/Compendium* (OSCE, 2011), in particular pp. 28-32.

fundamentally in this regard: a third party delivers decisions that are binding under international law.³⁵

Arbitration is a procedure of dispute settlement culminating in a binding decision made by one or more adjudicators in application of legal principles. The tribunal hearing the case is not a permanent one. Arbitration can be *ad hoc* (i.e. a tribunal created to settle a single dispute) or institutionalized (e.g. the International Centre for the Settlement of Investment Disputes). The nature of the process is consensual and flexible: the disputant parties consent to the arbitral tribunal's composition (appointment and number of arbitrators), the applicable law, the rules of procedure (e.g. evidence, oral and written proceedings), etc. Arbitral proceedings are generally held behind closed doors. The jurisdiction of an arbitral tribunal can be established through a general treaty of arbitration, a special agreement or an arbitral clause in a treaty.³⁶

The Permanent Court of Arbitration shall forever be associated with the Hague Peace Conference of 1899, which convened in pursuit of a peaceful alternative to the incessant arms race of that era. A major outcome of the Conference was the 1899 Convention for the Pacific Settlement of International Disputes³⁷, which brought about the creation of the PCA. The second Peace Conference led to the adoption of the 1907 Hague Convention³⁸, which improves upon the 1899 Hague Convention in several respects. Since 1913, the PCA is housed in the Peace Palace (The Hague).³⁹

The term “Permanent Court of Arbitration” is somewhat confusing: it is neither a permanent court, nor is it solely dedicated to arbitration. As an intergovernmental organization of nearly 120 Member States (i.e. States that have acceded to the 1899 and/or 1907 Conventions), it administers arbitration, conciliation and fact-finding in inter-State and State/non-State disputes. The PCA is composed of three main parts: the Administrative Council (in which representatives of the Member States make policy), the Members of the Court (a roster of potential arbitrations selected by

³⁵ Pellet, *o.c.*, para. 39.

³⁶ C.H. Brower, ‘Arbitration’, in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2007, paras. 1-8, opil.ouplaw.com; Collier & Lowe, *o.c.*, pp. 31-32.

³⁷ Convention for the Pacific Settlement of International Disputes, 29 July 1899.

³⁸ Convention for the Pacific Settlement of International Disputes, 18 October 1907.

³⁹ B.W. Daly, ‘Permanent Court of Arbitration’, in C. Giorgetti (ed.), *The Rules, Practice, and Jurisprudence of International Courts and Tribunals* (Martinus Nijhoff, 2012), pp. 37-38.

Member States)⁴⁰ and the International Bureau, which provides administrative support, headed by a Secretary-General.⁴¹

In judicial settlement, conversely, the third party is a pre-existing, permanent body with established rules of procedure. Over the past decades, the world has witnessed a proliferation of the international judiciary. These adjudicative bodies can be grouped into “families” on the basis of substantive, geographical and other criteria.⁴² The category of direct relevance to this study is made up of courts that mainly hear disputes between States. Three important bodies fit this description: the ICJ, the International Tribunal for the Law of the Sea (ITLOS) and the Appellate Body of the World Trade Organization (WTO AB). While the ICJ is a general court that may hear cases on all sorts of subjects, the ITLOS and the WTO AB are specialized, given that their jurisdiction is limited to disputes concerning the United Nations Convention on the Law of the Sea (UNCLOS)⁴³ and agreements and commitments made in the WTO respectively.⁴⁴ Other types of courts include international criminal tribunals (e.g. International Criminal Court), human rights bodies (e.g. European Court of Human Rights), and courts of regional economic integration (e.g. Court of Justice of the European Union).

The ICJ⁴⁵ or World Court is the principle judicial organ of the UN.⁴⁶ With its seat in the Peace Palace, it is the only UN principal organ not located in New York. The Court was established by the UN Charter in 1945 and has been operational since 1946 as the successor to the first global court, the Permanent Court of International Justice (PCIJ).⁴⁷ The fifteen Judges⁴⁸ who sit on the bench of the Court are elected for (renewable) nine-year terms by the UNGA and the UNSC.

⁴⁰ The PCA Members from each Member State constitute a “national group”, which nominates candidates for election to the ICJ. Art. 4 (1) ICJ Statute.

⁴¹ *Id.*, pp. 39-40.

⁴² See generally R. Mackenzie, C. Romano, Y. Shany & P. Sands, *The Manual on International Courts and Tribunals* (2nd ed., Oxford University Press, 2010).

⁴³ United Nations Convention on the Law of the Sea, 10 December 1982.

⁴⁴ Understanding on Rules and Procedures governing the Settlement of Disputes, Annex 2 to the Agreement establishing the World Trade Organization, 15 April 1994.

⁴⁵ See generally *Handbook of the International Court of Justice* (6th ed.), http://www.icj-cij.org/publications/en/manual_en.pdf.

⁴⁶ Art. 92 UN Charter.

⁴⁷ The PCIJ was created through the League of Nations without being a part of the latter.

Two activities make up the core business of the Court. Firstly, the Court settles legal disputes between UN Member States (and other States under certain conditions) in accordance with international law (i.e. contentious cases). Although all UN Member States are *ipso facto* parties to the ICJ Statute⁴⁹, the Court only has jurisdiction to hear cases if it has received the consent of the parties to do so. Consent can be given in four ways⁵⁰:

- Special agreement (or *compromis*): the parties jointly confer jurisdiction upon the Court to settle a specific dispute.
- Compromissory clause: a treaty provision grants the ICJ jurisdiction to entertain cases concerning the interpretation or application of that treaty.
- Optional clause⁵¹: a State may deposit a declaration with the UNSG recognizing as compulsory, in relation to any other State accepting the same obligation, the jurisdiction of the Court in legal disputes. In other words, the Court will be able to hear a case thanks to the reciprocal effect of two declarations (those of the applicant and respondent States). No additional agreement is required. States are entirely free to choose whether or not they wish to accept the Court's jurisdiction as compulsory. Moreover, it should be added that a good deal of these declarations have reservations excluding certain categories of disputes (e.g. military matters) or placing other limits on the acceptance of jurisdiction. As it currently stands, 72 States have deposited a declaration (with or without reservations). In the period from 2009 until today, a total of six States joined the group of countries recognizing the Court's compulsory jurisdiction: Ireland (15 December 2011), Timor-Leste (21 September 2012), Lithuania (26 September 2012), Marshall Islands (24 April 2013), Italy (25 November 2014) and Romania (23 June 2015).⁵²

⁴⁸ This does not take into account “Judges *ad hoc*”, who may be appointed by States party to a case which do not have a Judge of their nationality on the bench (Art. 31 (2) and (3) ICJ Statute).

⁴⁹ Art. 93 (1) UN Charter.

⁵⁰ All heads of jurisdiction described here, except for *forum prorogatum*, can be found in Art. 36 ICJ Statute.

⁵¹ The conundrum of compulsory jurisdiction has been much debated in legal scholarship. For recent examples, see: V. Lamm, *Compulsory Jurisdiction in International Law* (Edward Elgar, 2014); G. Törber, *The Contractual Nature of the Optional Clause* (Hart Publishing, 2015).

⁵² See ICJ, ‘Declarations Recognizing the Jurisdiction of the Court as Compulsory’, <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3>. Declarations were also deposited by the United Kingdom (31 December 2014) and Greece (14 January 2015) in the same period. They replace and/or

- *Forum prorogatum*: this legal doctrine enables a respondent State that has not recognized the Court's jurisdiction at the time that the applicant State has instituted proceedings to remedy this lack of jurisdiction by giving its consent.

Secondly, the ICJ may deliver advisory opinions at the request of certain UN organs and international organizations. Currently, the UNGA, the UNSC, the UN Economic and Social Council, the UN Trusteeship Council, most specialized agencies of the UN (e.g. International Labor Organization) and the International Atomic Energy Agency may seek the advice of the World Court on legal questions. Although advisory opinions are not binding (except in some rare instances), they carry great legal and moral weight.

update pre-existing declarations recognizing the ICJ's jurisdiction as compulsory and are therefore not included in the above list.

III. PROMOTION OF THE INTERNATIONAL COURT OF JUSTICE AND THE PERMANENT COURT OF ARBITRATION

The Netherlands enjoys a close relationship with the ICJ and the PCA. In addition to serving as host nation (The Hague is the seat of both institutions), the Netherlands is a Member State of the PCA (having ratified the 1899 and 1907 Conventions for the Pacific Settlement of International Disputes) and a party to the ICJ Statute (by virtue of being a UN Member State).⁵³ The Dutch Government fulfills an additional role within the PCA's structures: the Netherlands Minister of Foreign Affairs is the President of the PCA Administrative Council.⁵⁴

Before reviewing the different Dutch initiatives supportive of the ICJ and the PCA, it is worth highlighting that the Netherlands has made commitments to utilize these fora in the settlement of its own disputes.

The Netherlands accepts as compulsory the jurisdiction of the ICJ, as it had previously done with respect to the PCIJ.⁵⁵ Beyond this general acceptance, the Dutch Government has agreed to legal forms of dispute resolution in its relations with treaty partners. The MFA's policy is to favour the insertion of jurisdictional dispute settlement provisions in the bilateral and multilateral conventions it concludes with its counterparts.⁵⁶ A case in point from the period 2009-2014 is the new Ems-Dollart Treaty with Germany, which regulates maritime economic activities in an area of territorial sea north of the Ems estuary. Disputes may be submitted to an arbitral tribunal on the basis of the PCA Optional Rules for Arbitrating Disputes Between Two States. If the arbitrators are not appointed within the designated timeframes,

⁵³ Art. 93 (1) UN Charter.

⁵⁴ Art. 49 Convention for the Pacific Settlement of International Disputes, 18 October 1907 (Art. 28 Convention for the Pacific Settlement of International Disputes, 29 July 1899). In practice, the Minister of Foreign Affairs is often represented by the Legal Adviser of the Netherlands MFA.

⁵⁵ See ICJ, 'Declarations Recognizing the Jurisdiction of the Court as Compulsory', <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3>. The declaration, issued on 1 August 1956, does not contain significant reservations and is renewed by tacit agreement for additional periods of five years, unless notice is given.

⁵⁶ Interview with the author of the present report.

either State Party may request the President of the ICJ to make the necessary appointments.⁵⁷ Even though such clauses are oftentimes left out at the insistence of other drafting parties, this point is generally raised by the Netherlands. Another obstacle to the inclusion of jurisdictional clauses may occur when treaty negotiations on the Dutch side are not led by the MFA. This is due to a lack of technical understanding and suboptimal co-ordination. Drafting these provisions is an intricate affair and the significance of having a robust dispute settlement mechanism may not always be fully appreciated by other Dutch Ministries.⁵⁸ Therefore, sound co-ordination between negotiators and the MFA Legal Affairs Department is essential in this regard.

Support for international adjudication is also strengthened through the Netherlands opting into facultative clauses conferring jurisdiction upon arbitration tribunals or the ICJ to hear disputes concerning the interpretation or application of the treaty in question. During the review period, the Government of the Netherlands did so in relation to a number of environmental agreements, such as the Basel Convention, the Climate Change Convention and the Rotterdam Convention.⁵⁹

The emphasis in this study lies with the legal means of dispute settlement, doubtless the Netherlands' traditional focal point. Nonetheless, the growing importance of mediation in Dutch foreign policy should briefly be acknowledged. Although the Netherlands does not have a tradition of acting as mediator between conflicting parties like some other countries do, it provides pragmatic support to mediation and preventive diplomacy through financial assistance to international bodies (e.g. the Mediation Support Unit of the UN Department of Political Affairs) and private institutions (e.g. Centre for Humanitarian Dialogue, mediation programs at the

⁵⁷ Art. 24 Verdrag tussen het Koninkrijk der Nederlanden en de Bondsrepubliek Duitsland betreffende het gebruik en beheer van de territoriale zee van 3 tot 12 zeemijlen, 24 October 2014. For another example of an arbitral clause from the same period, see Art. 3 (7) Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands relating to the Exploitation of the ORCA Field, 27 November 2013.

⁵⁸ Interview with the author of the present report.

⁵⁹ Art. 20(3) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 22 March 1989; Art. 14(2) United Nations Framework Convention on Climate Change, 9 May 1992; Art. 20(2) Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 10 September 1998. The Netherlands made the relevant declarations on 17 February 2010, which can be found at: United Nations Treaty Series, 'Multilateral Treaties Deposited with the Secretary-General', <https://treaties.un.org/pages/ParticipationStatus.aspx>.

Clingendael Institute), as well as its membership of gatherings such as the UN Group of Friends of Mediation, a major player in the advancement and promotion of mediation as a tool of international dispute settlement.⁶⁰ The influence of the Netherlands within the Group of Friends still remains fairly limited. This is due in part to the Netherlands not having held membership for long and the Dutch Minister of Foreign Affairs having been absent from previous events organized by the Group.⁶¹

1. United Nations

As the premier international organization with universal membership, the United Nations provides a major inter-governmental venue for discussing a broad range of topics. The Government of the Netherlands has availed itself of this medium to promote the peaceful settlement of international disputes.

On 24 September 2012, the High-level Meeting of the 67th Session of the UNGA on the Rule of Law at the National and International Levels was held. UN Member States, civil society and NGOs convened in order to chart a course towards strengthening the rule of law.⁶² The event culminated in a concise outcome document, a Declaration, adopted by the Heads of State and Government and heads of delegation gathered at UN Headquarters in New York.⁶³ The Netherlands sought engaged involvement in the High-level meeting:

- The Permanent Representative of the Netherlands to the United Nations in New York made a statement during informal consultations in preparation for the High-level Meeting. Responding to a program of action by the UN Secretary-General to strengthen the inter(national) rule of law⁶⁴, the role of

⁶⁰ Interview with the author of the present report.

⁶¹ MFA- archive. DMM//MP 283/ 2013.

⁶² United Nations Rule of Law, High-level Meeting on the Rule of Law, 24 September 2012, http://unrol.org/article.aspx?article_id=168.

⁶³ UNGA Res. 67/1, *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels* (2012).

⁶⁴ Report of the Secretary-General, *Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels*, UN Doc. A/66/749 (2012).

international courts and tribunals was highlighted as an element of particular importance to the Netherlands.⁶⁵

- During the opening of the High-level Meeting, the Minister of Foreign Affairs delivered a statement stressing the Dutch commitment to the peaceful settlement of disputes, including a call for universal recognition of the ICJ's compulsory jurisdiction.⁶⁶
- The Netherlands held a Ministerial Breakfast Meeting on the occasion of the High-level Meeting entitled 'Peaceful settlement of conflict: the elegant way out. The role of the International Court of Justice and the Permanent Court of Arbitration'.⁶⁷ Chaired by the Dutch Foreign Minister⁶⁸, the meeting saw keynote speeches from the President of the ICJ, Judge Peter Tomka, the Secretary-General of the PCA, Mr. Hugo Hans Siblesz, and Deputy Secretary-General of the UN, Mr. Jan Eliasson.⁶⁹ One of the aims of this event was to give a platform to the Deputy Secretary-General's campaign for broader recognition of the ICJ's jurisdiction. The Permanent Representative of India to the UN took the floor to talk about his country's experience with the PCA.⁷⁰ The Legal Adviser to the Department of Foreign Affairs and Trade of Ireland was invited to speak to the audience about Ireland's recent declaration accepting the ICJ's jurisdiction. Different factors proved decisive to lodging the Irish declaration, such as increased familiarity with the Court thanks to

⁶⁵ Statement by the Netherlands on Rule of Law at the national and international levels, New York, 18 April 2012, <http://www.netherlandsmission.org/statements/2012/18-april-12.html>.

⁶⁶ Statement by H.E. Dr. Uri Rosenthal, Minister of Foreign Affairs of the Kingdom of the Netherlands, High-level Meeting on the Rule of Law, New York, 24 September 2012, http://www.unrol.org/files/Statement_TheNetherlands.pdf.

⁶⁷ Ministerial Breakfast Meeting on the occasion of the Rule of Law High Level Meeting of the 67th Session of the General Assembly 'Peaceful Settlement of Conflict: The Elegant Way Out. The role of the International Court of Justice and the Permanent Court of Arbitration', New York, 24 September 2012, <http://unrol.org/files/Save%20the%20Date%20Peaceful%20Settlement%20of%20Conflict.pdf>.

⁶⁸ Introductory remarks by H.E. Dr. Uri Rosenthal, Minister of Foreign Affairs of the Kingdom of the Netherlands at the side event 'The Peaceful Settlement of Conflict: The Elegant Way Out', New York, 24 September 2012, <http://www.netherlandsmission.org/statements/2012/24-september-12%5B2%5D.html>.

⁶⁹ Deputy Secretary-General's remarks to Ministerial Breakfast on Peaceful Settlement of Conflict: The Elegant Way Out, the Role of the ICJ and the Permanent Court of Arbitration [as prepared for delivery], New York, 24 September 2012, <http://www.un.org/sg/dsg/statements/index.asp?nid=361>.

⁷⁰ NYV/2012/1067.

Ireland's participation in recent advisory opinions⁷¹ and peer support from other States that had previously recognized the ICJ's jurisdiction, such as the Netherlands.⁷² The side event was also attended by the Romanian Minister of Foreign Affairs, where he expressed his country's support for the ICJ and the PCA.⁷³ Following a domestic dialogue on whether to accept the Court's compulsory jurisdiction, announced at the High-level meeting⁷⁴, Romania became the most recent State to do so in 2015. The meeting's emphasis on the complementarity of the ICJ and the PCA was viewed favourably by the UN Under-Secretary-General for Legal Affairs and UN Legal Counsel.⁷⁵

The hosting of another UN side-event on 25 September 2013, entitled "100 Years Peace Palace: Advancing the Framework for Peaceful Settlement of Disputes", enabled the Netherlands to revisit this theme. The Dutch Minister of Foreign Affairs, Mr. Frans Timmermans, who chaired the event, called upon the international community to make more use of the dispute settlement methods enshrined in the UN Charter. Once more, the ICJ President, the PCA Secretary-General and the UN Deputy-Secretary-General were in attendance. The UN Under-Secretary-General for Legal Affairs and UN Legal Counsel drew upon previous ICJ cases to demonstrate how the Court has strengthened the rule of law in international affairs.⁷⁶ Several of the Ministers of Foreign Affairs who were present expressed their belief in the importance of the ICJ and the PCA. An important outcome of the meeting was the

⁷¹ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Statement of the Government of Ireland, 17 April 2009, <http://www.icj-cij.org/docket/files/141/15662.pdf>; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Statement of the Government of Ireland, January 2004, <http://www.icj-cij.org/docket/files/131/1613.pdf>.

⁷² 'Legal Adviser, Department of Foreign Affairs and Trade of Ireland: Ireland's acceptance of the jurisdiction of the International Court of Justice pursuant to Article 36.2 of its Statute', 7 *Irish Yearbook of International Law* (2012), pp.331-333.

⁷³ Permanent Mission of Romania to the United Nations, 'The first day of the participation of H.E. Mr. Titus Corlățean, Minister of Foreign Affairs of Romania, in the events dedicated to the 67th Session of the General Assembly of the UN', <http://mpnewyork.mae.ro/en/local-news/1326>.

⁷⁴ Address by H.E. Mr. Titus Corlățean, Minister of Foreign Affairs of Romania, at the High Level Meeting on the Rule of Law UN General Assembly, New York, 24 September 2012, http://www.unrol.org/files/Statement_Romania.pdf.

⁷⁵ NYV/2012/1085.

⁷⁶ Remarks by Mr. Miguel de Serpa Soares, UN Under-Secretary-General for Legal Affairs and UN Legal Counsel at the Ministerial Breakfast on Peaceful Settlement of Disputes – 100 Years Peace Palace: Advancing the Framework for Peaceful Settlement of Disputes, 25 September 2013, http://legal.un.org/ola/media/info_from_lc/mss/speeches/MSS_side_event_GA-68-25-Sept-2013.pdf.

launch of the Group of Friends of Peaceful Settlement of Disputes of which Liberia is the co-chair.⁷⁷

Beyond the meetings described above, the Netherlands has made several statements in the UNGA and the UNSC which put peaceful dispute resolution on the radar. This includes:

- A statement by the Dutch Minister of Foreign Affairs during the General Debate of the 67th Session of the UNGA, calling for greater recognition of the compulsory jurisdiction of the ICJ and noting the increasingly important role to be played by the PCA in promoting foreign direct investment through the enhancement of conflict resolution mechanisms and arbitration.⁷⁸
- In an address to the 68th Session of the UNGA, the Minister of Foreign Affairs of the Netherlands advocated taking three steps to reinforce instruments for dispute settlement: 1) broader recognition of the ICJ's compulsory jurisdiction, 2) utilizing the UNGA, the UNSC and public debate to draw attention to the benefits of arbitration, 3) reduce hurdles to peaceful dispute resolution by making alternatives available, as demonstrated by the Netherlands' support for the UN Department of Political Affairs and NGOs that promote mediation.⁷⁹
- At a UNSC Arria-formula meeting⁸⁰ entitled 'The Peaceful Settlement of Disputes, Conflict Prevention and Resolution: Mediation, Judicial Settlement and Justice', the Permanent Representative of the Netherlands to the UN spoke to the participants about the major role played by the ICJ in not only

⁷⁷ NYV/2013/782.

⁷⁸ Address to the 67th Session of the United Nations General Assembly by H.E. Dr. Uri Rosenthal, Minister of Foreign Affairs of the Kingdom of the Netherlands, 'Strengthening the international legal order', New York, 28 September 2012, <http://www.netherlandsmission.org/statements/2012/29-september-12.html>.

⁷⁹ Address to the 68th Session of the United Nations General Assembly by H.E. Mr. Frans Timmermans, Minister of Foreign Affairs of the Kingdom of the Netherlands, New York, 27 September 2013, <http://www.netherlandsmission.org/statements/2013/address-to-the-68th-session-of-the-united-nations-general-assembly-by-his-excellency-frans-timmermans.html>.

⁸⁰ These meetings are "very informal, confidential gatherings which enable Security Council members to have a frank and private exchange of views, within a flexible procedural framework, with persons whom the inviting member or members of the Council (who also act as the facilitators or convenors) believe it would be beneficial to hear and/or to whom they may wish to convey a message." The Security Council: Working Methods Handbook, Annex: Background Note on the "Arria-Formula" Meetings of the Security Council Members, <http://www.un.org/en/sc/about/methods/bgarriafformula.shtml>.

settling disputes but also preventing them and inducing their resolution. Having addressed the advisory function of the ICJ and the wide-ranging subject-matters of recent cases, he launched another call for recognition of the Court's compulsory jurisdiction. The increasing popularity of the PCA was mentioned alongside its availability for resolving disputes involving private parties and international organizations. The Ambassador encouraged States which had not yet done so to ratify the Hague Conventions and urged greater use of the PCA's services, such as conciliation and fact-finding.⁸¹

- In UNSC open debates on conflict prevention, the Netherlands has advocated strategies which the UNSC could adopt to foster dispute resolution in relation to State and non-State actors⁸² and has reaffirmed the significance of judicial settlement and mediation.⁸³
- Following a speech by the President of the ICJ to the Sixth Committee of the UNGA, the Netherlands MFA's legal advisor – expressing a personal view – pointed to a seeming contradiction posed by States that had not recognized the Court's jurisdiction as compulsory nominating candidates for the position of Judge on the World Court.⁸⁴

The multiple calls for wider recognition of the ICJ's compulsory jurisdiction, as demonstrated above, bear testament to the Netherland's eagerness to back this cause. Nonetheless, the support of the Dutch Government is often worded in broad terms. The challenge of sweeping reservations in declarations accepting jurisdiction is seldom mentioned. Although some have highlighted the beneficial aspects of having a

⁸¹ Statement by the Permanent Representative of the Kingdom of the Netherlands to the United Nations, Security Council Arria Formula meeting 'The Peaceful Settlement of Disputes, Conflict Prevention and Resolution: Mediation, Judicial Settlement and Justice', New York, 30 May 2012, <http://www.netherlandsmission.org/statements/2012/30-may-12.html>.

⁸² Statement by the Vice, Deputy Permanent Representative of the Kingdom of the Netherlands to the United Nations, Security Council Open Debate 'Conflict Prevention', New York, 21 August 2014, <http://www.netherlandsmission.org/statements/2014/open-security-council-debate.html>.

⁸³ Statement by the Permanent Representative of the Kingdom of the Netherlands to the United Nations, Security Council Open Debate, 'War, its lessons and the search for a permanent peace', New York, 29 January 2014, <http://www.netherlandsmission.org/statements/2014/open-security-council-debate-maintenance-of-international-peace-and-security.html>.

⁸⁴ Statement by the President of the International Court of Justice, UN Doc. A/C.6/68/SR.21 (2013), para. 21.

regime permitting reservations⁸⁵, the Netherlands should consider how this question could be adequately integrated in its advocacy of the ICJ.⁸⁶

2. European Union

The European Heritage Label (EHL) was established in 2011 and forms part of the European Union's (EU) programme for the cultural and creative sectors. The scheme is intended to strengthen intercultural dialogue and EU citizens' sense of belonging to the Union by raising the profile of significant sites.⁸⁷

The successful candidate sites are selected for their symbolic value and the substantial role they have played in European history and integration. The decision to award European Heritage Labels is taken by the European Commission based on the recommendations of a panel of independent experts. The EHL is open to sites located in any of the EU Member States participating in the scheme.⁸⁸

The Dutch Government chose to submit the Peace Palace in The Hague as a candidate for the EHL, following a 2012 advisory report of the Council for Culture.⁸⁹ The endeavor proved to be successful: the Peace Palace was one of four sites to make it

⁸⁵ S.A. Alexandrov, *Reservations in Unilateral Declarations Accepting the Compulsory Jurisdiction of the International Court of Justice* (Martinus Nijhoff, 1995) (arguing that the right to formulate reservations may actually contribute to wider acceptance of the World Court's jurisdiction as compulsory).

⁸⁶ See Recommendation CM/Rec. (2008) 8 of the Committee of Ministers to Member States on the Acceptance of the Jurisdiction of the International Court of Justice, 2 July 2008, http://www.coe.int/t/dlapil/cahd/Source/Adopted_texts/Recommendation_2008_8_EN.pdf (proposing model clauses with reasonable reservations; noting that there is no requirement to make reservations; observing that certain COE Member States have indeed accepted the ICJ's jurisdiction as compulsory without such restrictions). Earlier UNGA Resolutions recognized the desirability of accepting the World Court's jurisdiction "with as few reservations as possible". See UNGA Res. 171 (II), *Need for Greater Use by the United Nations and its Organs of the International Court of Justice* (1947), para. 1; UNGA Res. 3232 (XXIX), *Review of the Role of the International Court of Justice* (1974), para. 1. See also Report of the Secretary-General pursuant to the Statement adopted by the Summit Meeting of the Security Council on 31 January 1992, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, UN Doc. A/47/277-S/24111 (1992), para. 39 (a) (recommending recognition of jurisdiction "without any reservation").

⁸⁷ European Commission, 'European Heritage Label – Europe Starts Here!', http://ec.europa.eu/programmes/creative-europe/actions/heritage-label/index_en.htm; Decision No 1194/2011/EU of the European Parliament and of the Council of 16 November 2011 establishing a European Union action for the European Heritage Label, OJ L 303/1, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011D1194>.

⁸⁸ *Id.*

⁸⁹ Council for Culture, 'Advies Kandidaten Europees Erfgoedlabel', 20 December 2012, <http://www.cultuur.nl/upload/documents/adviezen/advies-kandidaten-europees-erfgoedlabel.pdf>.

into the first ever EHL selection. The panel of experts gave a positive assessment of its significance as an icon of peace and justice, the presentation of its European dimension and its organizational capacity.⁹⁰

Several benefits accrue to sites participating in this initiative, such as permission to use the EHL logo, having access to the EU's communication tools and being invited to annual conferences of site managers to exchange best practices.⁹¹ The Label features prominently on the main page of the Peace Palace's website⁹², while the EHL website includes a video presentation of the Peace Palace, introduced by the General Director of the Carnegie Foundation.⁹³

Despite the clear benefits mentioned above, it can be questioned whether the EHL is a perfect match for an institution like the Peace Palace. The strong focus on the European dimension of EHL sites does not fully reflect the universal aspirations of the Peace Palace and the adjudicatory bodies it houses, which serve the interests of the international community at large.⁹⁴

3. Council of Europe

The Council of Europe (COE) is a regional organization active in a broad array of areas ranging from human rights promotion to legal co-operation and the strengthening of social cohesion. The work of the COE includes the adoption of conventions (e.g. European Convention on Human Rights⁹⁵), monitoring by independent bodies and issuing recommendations to the governments of its Member States.

⁹⁰ European Heritage Label 2013 Panel Report, http://ec.europa.eu/programmes/creative-europe/actions/heritage-label/documents/2013-panel-report_en.pdf. The award ceremony took place on 8 April 2014. See European Commission Press Release Database, 'First sites to get European Heritage Label named', 28 November 2013, http://europa.eu/rapid/press-release_IP-13-1177_en.htm.

⁹¹ European Commission, 'European Heritage Label – Europe Starts Here!', http://ec.europa.eu/programmes/creative-europe/actions/heritage-label/index_en.htm.

⁹² Vredespaleis, <http://www.vredespaleis.nl/index.php?tl=1>.

⁹³ European Commission, 'European Heritage Label – Discover the Sites', http://ec.europa.eu/programmes/creative-europe/actions/heritage-label/discover_en.htm. The Carnegie Foundation is the manager and owner of the grounds and buildings of the Peace Palace. See Vredespaleis, 'Carnegie Foundation', http://www.vredespaleis.nl/index.php?pid=54&page=Carnegie_Foundation.

⁹⁴ Interview with the author of the present report.

⁹⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950.

The Committee of Legal Advisers on Public International Law (CAHDI) is an *ad hoc* body of experts comprised of MFA legal advisers of the COE Member States and Observer States as well as organization-based legal advisers. Other than providing a forum for government officials to exchange views on current international legal trends, the CAHDI advises the COE Committee of Ministers on questions of public international law, holds conferences, institutes databases, examines reports of the UN International Law Commission, conducts “review exercises” of COE conventions and in a more general sense contributes to the development of international law. It should be noted that the peaceful settlement of disputes is a recurrent feature on the CAHDI’s agenda.⁹⁶ Each year a Chair and Vice-Chair are elected to steer the CAHDI. However, it has become standard practice for both individuals to serve a two year-term whereby the Vice-Chair becomes the Chair once the latter’s term has ended.⁹⁷

The Legal Adviser of the Netherlands MFA held the office of Chair of the CAHDI from 2013 to 2014. The topic of peaceful dispute settlement remained on the agenda of each CAHDI meeting throughout this period. In meetings held in 2013, the Dutch delegation of the Netherlands informed the CAHDI of the various past and forthcoming events that the Netherlands was organizing that year in celebration of the 100th anniversary of the Peace Palace.⁹⁸ The Chair highlighted the importance of such events for raising public awareness of the work done by the ICJ and the PCA.⁹⁹

During the Dutch chairmanship, the CAHDI also conducted a review exercise of the European Convention for the Peaceful Settlement of Disputes, a treaty adopted in 1957 that deals with three procedures for resolving disputes: judicial settlement, conciliation and arbitration.¹⁰⁰ Although the Convention is not known to many, it has been used to bring cases before the ICJ, most recently by Germany to settle a dispute

⁹⁶ For an overview of the CAHDI’s activities in this field, see <http://www.coe.int/en/web/cahdi/peaceful-settlement-of-disputes>.

⁹⁷ M. Wood, ‘Committee of Legal Advisers on Public International Law (CAHDI)’, in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2013, opil.ouplaw.com; Committee of Legal Advisers on Public International Law, <http://www.coe.int/en/web/cahdi/cahdi>.

⁹⁸ Meeting report of the 45th meeting of the Committee of Legal Advisers on Public International Law, Strasbourg, 25-26 March 2013, para. 52, <http://www.coe.int/en/web/cahdi/all-meeting-reports>; Meeting report of the 46th meeting of the Committee of Legal Advisers on Public International Law, Strasbourg, 16-17 September 2013, para. 66, <http://www.coe.int/en/web/cahdi/all-meeting-reports>.

⁹⁹ Meeting report of the 46th meeting of the Committee of Legal Advisers on Public International Law, Strasbourg, 16-17 September 2013, para. 68, <http://www.coe.int/en/web/cahdi/all-meeting-reports>.

¹⁰⁰ European Convention for the Peaceful Settlement of Disputes, 29 April 1957.

with Italy over violations of its State immunity.¹⁰¹ Having been presented with an analytic overview of the Convention¹⁰², the Chair invited the delegation to proceed to an exchange of views concerning its practical importance. The CAHDI concluded that the Convention is not in need of revision as it is a valuable instrument for encouraging States to refer disputes to the ICJ. It also observed that the Convention deserves to be promoted more so as to increase its visibility and garner a higher number of ratifications.¹⁰³ The CAHDIs findings were presented by its Chair to the meeting of the Ministers' Deputies of the COE¹⁰⁴ and to the UN International Law Commission.¹⁰⁵

4. Peace Palace centenary

Constructed in the early 20th century through a large donation by the Scottish American philanthropist Andrew Carnegie, the Peace Palace celebrated its centenary in 2013. Numerous conferences and events were held throughout that year to mark the momentous occasion. The large number of civil society-led events ran the gamut from academic workshops to more artistic and leisurely activities such as a musical, a marathon and a cartooning conference.¹⁰⁶

¹⁰¹ *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*. See also *North Sea Continental Shelf Cases (Federal Republic of Germany/Netherlands; Federal Republic of Germany/Denmark); Certain Property (Liechtenstein v. Germany)*.

¹⁰² Examination of the European Convention for the Peaceful Settlement of Disputes (ETS No.23), 47th meeting of the Committee of Legal Advisers on Public International Law, Strasbourg, 20-21 March 2014, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680078b35>.

¹⁰³ Meeting report of the 47th meeting of the Committee of Legal Advisers on Public International Law, Strasbourg, 20-21 March 2014, paras. 57-61, <http://www.coe.int/en/web/cahdi/all-meeting-reports>.

¹⁰⁴ Presentation by the Chair of the Committee of Legal Advisers on Public International Law (CAHDI) at the 1202nd meeting of the Ministers' Deputies, 11 June 2014, p. 3, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168044e84f>.

¹⁰⁵ Presentation by the Chair of the Committee of Legal Advisers on Public International Law (CAHDI) at the 66th Session of the United Nations International Law Commission, 16 July 2014, p. 4, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168044f569>.

¹⁰⁶ Peace Palace Library, 'Peace Palace Centenary', <http://www.peacepalacelibrary.nl/peace-palace-centenary/>.

The Netherlands MFA, oftentimes together with the Carnegie Foundation and the municipality of The Hague, organized a series of commemorative events. Two conferences in particular should be mentioned for shining a spotlight on peaceful dispute settlement:

- The Permanent Court of Arbitration held a live broadcast of its Peace Palace Centenary Seminar entitled “Confronting Global Challenges: From Gunboat Diplomacy to Investor-State Arbitration”. A panel of eminent practitioners, including members of the ICJ, discussed the contemporary challenges of the rapidly expanding field of investor-state arbitration.¹⁰⁷
- On 28 August 2013, the Government of the Netherlands hosted a Ministerial Conference on Peaceful Dispute Resolution at the Peace Palace. The UN Secretary-General Ban Ki-moon delivered a speech at the opening of the conference. He shared his belief that accepting the jurisdiction of the ICJ as compulsory would strengthen the international legal order and commended those who have used the methods enshrined in the UN Charter to deescalate tension and reduce conflict.¹⁰⁸ The Dutch Prime Minister¹⁰⁹ and Minister of Foreign Affairs¹¹⁰ also addressed the audience, composed of His Majesty Willem-Alexander and other dignitaries. After the opening speeches, a joint statement on peaceful dispute settlement was signed and separate panels discussed judicial settlement, arbitration and mediation respectively.

5. Third countries and civil society

Through its interactions with third countries and civil society, the Netherlands has promoted international dispute settlement in a variety of ways. For instance, in

¹⁰⁷ Permanent Court of Arbitration, ‘The PCA Peace Palace Centenary Seminar’, 11 October 2013, http://www.pca-cpa.org/shownewsc2bb.html?ac=view&pag_id=1261&cnws_id=362.

¹⁰⁸ UN News Centre – Ban Ki-moon’s Speeches, ‘Remarks at opening of Ministerial Conference on the Peaceful Settlement of Disputes’, 28 August 2013, http://www.un.org/apps/news/infocus/sgspeeches/statements_full.asp?statID=1947#.VcTFB3jnK2w.

¹⁰⁹ Government of the Netherlands, ‘Toespraak Rutte bij het 100-jarig bestaan Vredespaleis’, 28 August 2013, <http://www.rijksoverheid.nl/documenten-en-publicaties/toespraken/2013/08/28/toespraak-rutte-bij-het-100-jarig-bestaan-vredespaleis.html>.

¹¹⁰ Government of the Netherlands, ‘Toespraak van Timmermans bij het 100-jarig bestaan van het Vredespaleis’, 28 August 2013, <http://www.rijksoverheid.nl/documenten-en-publicaties/toespraken/2013/08/28/speech-peace-palace-centennial-100-years-of-peaceful-settlement-of-disputes.html>.

bilateral talks with representatives of an African and an Asian State, the Dutch Government has suggested arbitration, and the PCA in particular, as a reliable method for solving their respective border/river disputes.¹¹¹ These examples taken from reports of bilateral meetings appear to be outliers. In bilateral diplomacy the Netherlands does not raise the prospect of legal dispute settlement/acceptance of the World Court's compulsory jurisdiction as a matter of policy. A memo from within the Dutch MFA recommending that this be changed was rejected.¹¹²

The Netherlands has also increased the visibility of the ICJ and the PCA via logistical or financial support provided by its embassies to events held abroad:

- The Dutch Embassy in Colombo promoted The Hague as legal capital at a book launch celebrating the memoirs of Judge Weeramantry, former Sri Lankan Vice-President of the ICJ.¹¹³
- In August 2013, the Dutch Embassies in San José and Pretoria, together with local partners in Costa Rica and South Africa respectively, hosted events intended to reaffirm the importance of international courts and tribunals.¹¹⁴
- In the context of the 2014 American Society of International Law-International Law Association joint meeting, the Netherlands Embassy in Washington, D.C., sponsored an event bringing together the female justices of the World Court.¹¹⁵

Closer to home, the Government of the Netherlands has links with institutions active in the area of conflict resolution and justice. A case in point is the Hague Institute for Global Justice, which was established in 2011 with the aid of the Dutch Government.¹¹⁶ Among its recent activities, the Institute provided support to the Commission on Global Security, Justice & Governance, a body of eminent

¹¹¹ DAM-377/10; BAN-CDP.

¹¹² Interview with the author of the present report.

¹¹³ COL/V-2014/023.

¹¹⁴ SJO/34-2013; PRE-206/13.

¹¹⁵ 'Plenary Discussion: A Conversation with International Court of Justice Judges Joan Donoghue, Julia Sebutinde, and Xue Hanqin', *The Effectiveness of International Law: ILA 76th Biennial Conference/ASIL 108th Annual Conference*, p. 87, http://www.asil.org/sites/default/files/annualmeeting/pdfs/2014_Program.pdf.

¹¹⁶ The Hague Institute for Global Justice, 'About us', http://thehagueinstituteforglobaljustice.org/index.php?page=About_Us-Organization-About_us&pid=145.

statespersons and intellectuals, whose report recommends “expand[ing] acceptance of the World Court’s jurisdiction and mak[ing] use of its authoritative advisory opinions in innovative ways.”¹¹⁷

The Netherlands MFA also maintains ties with the Royal Netherlands Society of International Law, the local branch of the International Law Association.¹¹⁸ Each year, the Society hosts events to discuss current developments in international law. Its interest in peaceful dispute settlement is quite evident: this year’s spring meeting addressed the advantages and risks of arbitration with a presentation by the PCA Secretary-General¹¹⁹ and the 2013 annual meeting celebrated the centenary of the Peace Palace.¹²⁰ One of the papers written in the context of the 2013 meeting explores the ICJ’s contribution to the development of private international law and its potential future role, including broadening access to the Court. The authors of the study advocate a serious examination of the possibility for national courts to request preliminary opinions from the ICJ on the interpretation and application of private international law conventions.¹²¹ The Society has asked the Netherlands MFA to submit this question to *inter alia* the Advisory Committee on Issues of Public International Law for further consideration.¹²² Later this year the Advisory Committee will decide whether it will take on this topic.¹²³

6. The Hague Project Peace and Justice

¹¹⁷ Confronting the Crisis of Global Governance: Report of the Commission on Global Security, Justice & Governance, June 2015, xix and p. 90, <http://www.globalsecurityjusticegovernance.org/wp-content/uploads/2015/06/Commission-on-Global-Security-Justice-Governance-A4.pdf>.

¹¹⁸ Interview with the author of the present report.

¹¹⁹ Royal Netherlands Society of International Law, ‘Spring Meeting’, <http://www.knvir.org/events/spring-meeting/>.

¹²⁰ Royal Netherlands Society of International Law, ‘Annual General Meeting’, <http://www.knvir.org/events/annual-general-meeting/>.

¹²¹ H. van Loon & S. De Dycker, ‘The Role of the International Court of Justice in the Development of Private International Law’, 2013 General Annual Meeting of the Royal Netherlands Society of International Law, <http://www.knvir.org/wp-content/uploads/2014/02/preadvies-2013.pdf>.

¹²² Interview with the author of the present report. The Advisory Body is “an independent body that advises the government, the House of Representatives and the Senate of the Netherlands on international law issues.” See Advisory Committee on Issues of Public International Law, <http://www.cavv-advies.nl>.

¹²³ Advisory Committee on Issues of Public International Law, ‘Werkprogramma 2015’, http://cms.webbeat.net/ContentSuite/upload/cav/doc/Werkprogramma_2015.pdf.

The Netherlands MFA in co-operation with the City of The Hague launched The Hague Project Peace and Justice in an effort to bolster the Netherlands' reputation as a worldwide hub of peace, justice and security. The project is informed by the view that Dutch activities promoting the international legal order are not communicated in a consistent manner.¹²⁴

Though the implementation of a strategic plan, the project aims to change this state of affairs. The project has the backing of stakeholders such as the international courts and tribunals based in The Hague and NGOs specialized in international law. Various strategic instruments are employed to achieve the abovementioned goal. This includes outgoing visits by Dutch dignitaries with expertise in the realm of peace and justice, incoming visits by influential individuals, peace and justice missions requested by Dutch diplomatic missions abroad and social media tools.¹²⁵ Examples include the following:

- In March 2012, a delegation of dignitaries including the President of the ICJ and the Major of The Hague went to New York to present the Hague Project Peace & Justice to the UN Under-Secretary-General for Legal Affairs and UN Legal Counsel. Members of the delegation also took part in panel discussions at New York University School of Law and the International Peace Institute.¹²⁶
- A delegation of international courts and tribunals based in The Hague visited Indonesia and Malaysia in early December 2013 to promote The Hague. Their visit combined expert panels with a public debate.¹²⁷
- A public event was organized by the Netherlands Embassy in Harare, Zimbabwe, in 2013, with a keynote address by Judge Sebutinde, a Ugandan member of the ICJ.¹²⁸

¹²⁴ Nederlandse Permanente Vertegenwoordiging in Straatsburg - Raad van Europa, Frankrijk, 'Peace and Justice in a nutshell', 5 April 2013, <http://raadvaneuropa.nlvertegenwoordiging.org/nieuws/2013/april/peace-and-justice.html>.

¹²⁵ *Id.*

¹²⁶ NYV.379. A video recording of the International Peace Institute panel can be viewed at the following link: International Center for Transitional Justice, 'Panel Discussion: International Justice in Times of Transition', 28 March 2012, <https://www.ictj.org/news/panel-discussion-international-justice-time-transition>.

¹²⁷ JAK-040/13; KLL/018/2013.

¹²⁸ HAR/2013/57.

- On several occasions, foreign journalists from different parts of the globe were invited to The Hague to get an inside look of institutions working in the field of peace and justice (experiences included interviews with judges, attending hearings of the World Court, etc.).¹²⁹
- A judicial mission was sent to Saint Petersburg, Russia, in 2013 for purposes of outreach. Satisfaction surveys indicate that participants felt it was a good opportunity to promote the activities and role of international courts and tribunals based in The Hague.¹³⁰

¹²⁹ Interview with the author of the present report.

¹³⁰ Interview with the author of the present report.

IV. PARTICIPATION IN PROCEEDINGS BEFORE THE INTERNATIONAL COURT OF JUSTICE AND THE PERMANENT COURT OF ARBITRATION

The Netherlands is no stranger to the World Court. On several occasions, the Dutch Government has appeared as applicant or respondent¹³¹, or has participated in advisory proceedings through submission of written observations and/or statements made at hearings.¹³² Similarly, the Netherlands has relied on the PCA to serve as registry in its arbitrations with other States.¹³³

The confidence in legal methods as a means to resolve disputes has endured. In the period under review, the Netherlands participated in significant international legal proceedings before the ICJ, the ITLOS and an *ad hoc* arbitral tribunal administered by the PCA: the *Kosovo Advisory Opinion*, the *Arctic Sunrise Case* and the *Arctic Sunrise Arbitration*.

1. Kosovo Advisory Opinion

On 17 February 2008, a representative body known as the Assembly of Kosovo proclaimed Kosovo “to be an independent and sovereign state.”¹³⁴ The declaration followed failed negotiations to determine the final status of Kosovo, which had become a flashpoint of the Yugoslav Wars in 1998-1999 before being placed under

¹³¹ ICJ: *Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v. Sweden)*; *Legality of Use of Force (Serbia and Montenegro v. Netherlands)*; *North Sea Continental Shelf Cases (Federal Republic of Germany/Netherlands)*; *Sovereignty over Certain Frontier Land (Belgium/Netherlands)*; PCIJ: *Diversion of Water from the Meuse (Netherlands v. Belgium)*.

¹³² E.g. ICJ: *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter); Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory; Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970); Legality of the Threat or Use of Nuclear Weapons; Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*. E.g. PCIJ: *Designation of the Workers' Delegate for the Netherlands at the Third Session of the International Labour Conference*.

¹³³ *Iron Rhine Arbitration (Belgium v. Netherlands)*; *Island of Palmas (or Miangas) (United States/Netherlands)*; *Island of Timor (Netherlands/Portugal)*; *Rhine Chlorides Arbitration Concerning the Auditing of Accounts (Netherlands v. France)*.

¹³⁴ Republic of Kosovo Assembly, ‘Kosovo Declaration of Independence’, <http://www.assembly-kosova.org/?cid=2,128,1635>.

temporary UN administration. The 2008 declaration of independence had caused division within the international community, with some recognizing Kosovo, others opposing its statehood, and another group not taking a stance either way. Determined to obtain legal clarity on this contentious issue, the UNGA decided to request an advisory opinion from the ICJ. The question submitted to the Court was as follows: “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”¹³⁵ The *Kosovo Advisory Opinion* was handed down on 22 July 2010, holding that Kosovo’s declaration of independence did not violate international law.¹³⁶

The Netherlands actively participated in the *Kosovo* proceedings, making full use of the possibility to furnish information to the Court:

- On 17 April 2009, the Netherlands submitted a written memorial arguing among other things that a serious breach of the right to self-determination had been committed in respect of Kosovo. It urged the Court to find that the 2008 declaration of independence was in accordance with international law or, in the alternative, that the proclamation is neither authorized nor prohibited under international law.¹³⁷
- Three months later, the Netherlands availed itself of the opportunity offered by the Court to comment on other written statements. In this second document, the Netherlands challenged a number of legal arguments made by other States, for instance concerning the concept of a “people”, and submitted additional points for the Court to consider.¹³⁸
- Having expressed its intention to participate in the hearings, the Netherlands presented an oral statement before the Court on 10 December 2009. The presentation dealt with the conditions under which the right to external self-

¹³⁵ UNGA Res. 63/3, *Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law* (2008).

¹³⁶ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion of 22 July 2010, <http://www.icj-cij.org/docket/files/141/15987.pdf>.

¹³⁷ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Written Statement of the Kingdom of the Netherlands of 17 April 2009, <http://www.icj-cij.org/docket/files/141/15652.pdf>.

¹³⁸ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Written Comments of the Kingdom of the Netherlands of 17 July 2009, <http://www.icj-cij.org/docket/files/141/15692.pdf>.

determination may be exercised in the post-colonial era and the lawful exercise of this right by the people of Kosovo.¹³⁹

- At the conclusion of the oral proceedings, several members of the Court addressed questions to the participants in the hearings. The Netherlands replied in writing to two of these questions, which concerned secession of a territory from a sovereign State without the latter's consent and the impact of a UN Security Council resolution respectively.¹⁴⁰

Within the MFA the Netherlands' participation in the *Kosovo Advisory Opinion* was deemed a positive experience and in tune with its ambition to promote the development of the international legal order.¹⁴¹

2. Arctic Sunrise Case/Arbitration

The Arctic Sunrise, a Greenpeace icebreaker flying the Dutch flag, staged a protest on 18 September 2013 against a Russian oilrig, the Prirazlomnaya. The offshore installation is situated in the Pechora Sea within Russia's exclusive economic zone. The protest formed part of a broader campaign to raise awareness about the environmental hazards of Arctic oil exploration. A day after the protest, Russian authorities boarded and detained the Arctic Sunrise and its crew. After towing the Arctic Sunrise to the port city of Murmansk, the persons on board the ship were held in custody, placed under arrest and charged with criminal offences.¹⁴²

Upon receiving notification from the Russian Federation that the decision had been taken to seize the Arctic Sunrise, the Netherlands, the flag State of the vessel, made an unsuccessful attempt to settle the dispute through diplomatic channels. The Netherlands submitted the dispute to an Arbitral Tribunal under the UNCLOS, with

¹³⁹ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Public Sitting held on 10 December 2009, CR 2009/32, <http://www.icj-cij.org/docket/files/141/15734.pdf>.

¹⁴⁰ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Reply to Questions of Members of the Court by the Kingdom of the Netherlands of 21 December 2009, <http://www.icj-cij.org/docket/files/141/17890.pdf>.

¹⁴¹ DJZ-IR 2010-154.

¹⁴² *Arctic Sunrise Arbitration (Netherlands v. Russia)*, Award on Jurisdiction of 26 November 2014, para. 3, <http://www.peacases.com/web/sendAttach/1325>.

the PCA acting as registry. The Netherlands simultaneously requested provisional measures before the ITLOS pending the formation of the arbitral tribunal.¹⁴³

The hearings on the request to prescribe provisional measures took place in the absence of the Russian Federation, who had indicated its intention not to participate in the ITLOS proceedings.¹⁴⁴ The Netherlands obtained a favourable decision from the ITLOS backed by a majority of 19 of the 21 Judges. On 22 November 2013, Russia was ordered to immediately release the Arctic Sunrise and all persons detained and ensure they could leave the territory and maritime areas of the Russian Federation upon the posting of a bond or other financial security by the Netherlands.¹⁴⁵ On 2 December 2013, the Netherlands informed the Tribunal and the Russian Federation that it had concluded an agreement with a bank to issue a bank guarantee.¹⁴⁶ In late November the persons who had been detained were released on bail and on 18 December 2013 the Russian State Duma passed a decree granting them amnesty. Shortly thereafter the non-Russian nationals were permitted to leave the country. The arrest of the vessel was only lifted months later, namely in June 2014. Subsequently the Arctic Sunrise arrived in Amsterdam on 9 August 2014.¹⁴⁷

The Arbitral Tribunal heard the oral arguments of the Netherlands in February 2015, once more without the participation of Russia.¹⁴⁸ Nearly two years after the events giving rise to the dispute, on 14 August 2015, the arbitrators rendered their unanimous award on the merits. The Arbitral Tribunal found, *inter alia*, that by boarding, investigating, inspecting, arresting, detaining, and seizing the Arctic Sunrise without

¹⁴³ Given that the arbitral tribunal had not yet been constituted, the Netherlands was required to turn to the ITLOS, a permanent court, for provisional relief. See Art. 290 (1) and (5) UNCLOS.

¹⁴⁴ *The Arctic Sunrise Case (Netherlands v. Russia), Provisional Measures*, Note verbale of the Embassy of the Russian Federation in Berlin of 22 October 2013, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.22/Note_verbale_Russian_Federation_eng.pdf.

¹⁴⁵ *The Arctic Sunrise Case (Netherlands v. Russia), Provisional Measures*, Order of 22 November 2013, para. 105, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.22/Order/C22_Ord_22_11_2013_orig_Eng.pdf.

¹⁴⁶ *The Arctic Sunrise Case (Netherlands v. Russia), Provisional Measures*, Report of the Kingdom of the Netherlands of 2 December 2013, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.22/C22_initial_report_orig.pdf.

¹⁴⁷ *Arctic Sunrise Arbitration (Netherlands v. Russia)*, Award on Jurisdiction of 26 November 2014, para. 3, <http://www.pcacases.com/web/sendAttach/1325>.

¹⁴⁸ *Arctic Sunrise Arbitration (Netherlands v. Russia)*, Press Release of 18 February 2015, <http://www.pcacases.com/web/sendAttach/1328>. The arbitral tribunal had already delivered its award on jurisdiction and several procedural orders prior to the abovementioned hearings.

the prior consent of the Netherlands, and by arresting, detaining, and initiating judicial proceedings against the Arctic 30, the Russia Federation breached several obligations owed by it to the Netherlands and that the Netherlands is entitled to compensation for material and non-material damage.¹⁴⁹

The Netherlands' handling of its dispute with Russia over the Arctic Sunrise demonstrates its resolve to resort to various techniques of peaceful dispute resolution. It should be stressed that before seeking recourse to third parties empowered to make binding decisions, genuine attempts were made to resolve the incident through direct, bilateral negotiations. Only after having exhausted the negotiation track were arbitral and judicial proceedings initiated by the Netherlands. Another noteworthy facet of the case is Greenpeace International's request to file an *amicus curiae*, i.e. a document submitted by someone who is not a party containing information relevant to the case. The Netherlands informed Greenpeace International that it did not have any objection to such a petition. Although both the ITLOS¹⁵⁰ and the Arbitral Tribunal¹⁵¹ denied the request to file an *amicus* brief, the Netherlands' position can be viewed as constructive in the debate on giving NGOs a voice in inter-State proceedings.¹⁵²

¹⁴⁹ *Arctic Sunrise Arbitration (Netherlands v. Russia)*, Award on the Merits of 14 August 2015, <http://www.pcacases.com/web/sendAttach/1438>. Questions of the quantum of compensation and interest will be dealt with by the arbitrators at a later phase of the proceedings.

¹⁵⁰ *The Arctic Sunrise Case (Netherlands v. Russia)*, Provisional Measures, Order of 22 November 2013, paras. 15-20, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.22/Order/C22_Ord_22_11_2013_orig_Eng.pdf.

¹⁵¹ *Arctic Sunrise Arbitration (Netherlands v. Russia)*, Procedural Order No. 3 (Greenpeace International's Request to File an Amicus Curiae Submission) of 8 October 2014, http://www.pca-cpa.org/2014-02%2020141008%20Procedural%20Order%20No.%2030971.pdf?fil_id=2814.

¹⁵² See A. Dolidze, 'The Arctic Sunrise and NGOs in International Judicial Proceedings', 18 *ASIL Insights* (2014), <http://www.asil.org/insights/volume/18/issue/1/arctic-sunrise-and-ngos-international-judicial-proceedings>; N. Klein, 'Who Litigates and Why', in C.P.R. Romano, K.J. Alter & Y. Shany (eds.), *The Oxford Handbook of International Adjudication* (Oxford University Press, 2014), p. 589.

V. ENHANCEMENT OF THE INTERNATIONAL COURT OF JUSTICE AND THE PERMANENT COURT OF ARBITRATION

If the workload of an adjudicatory body is a sign of its proper functioning, things seem to augur well for the ICJ and the PCA. At the time of writing, the World Court, which at one brief point in history did not have a single case before it¹⁵³, has twelve pending cases, three of which are currently being heard or are under deliberation. In the review period, the Court delivered judgments in a number of disputes marked by their varied themes: diplomatic protection¹⁵⁴, territorial disputes and/or maritime delimitation¹⁵⁵, river navigation¹⁵⁶, environmental protection¹⁵⁷, alleged breaches of the International Convention on the Elimination of All Forms of Racial Discrimination¹⁵⁸, the unlawful objection to the admission of a State to an international organization¹⁵⁹, violations of the jurisdictional immunities of a State¹⁶⁰, the obligation to prosecute or extradite a former head of State alleged to have been

¹⁵³ M. Shahabuddeen, ‘The World Court at the Turn of the Century’, in A.S. Muller, D. Raič & J.M. Thuránszky (eds.), *The International Court of Justice: Its Future Role After Fifty Years* (Kluwer Law International, 1997), p. 22.

¹⁵⁴ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgments of 30 November 2010 and 19 June 2012, <http://www.icj-cij.org/docket/files/103/16244.pdf> and <http://www.icj-cij.org/docket/files/103/17044.pdf>.

¹⁵⁵ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment of 3 February 2009, <http://www.icj-cij.org/docket/files/132/14987.pdf>; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment of 19 November 2012, <http://www.icj-cij.org/docket/files/124/17164.pdf>; *Frontier Dispute (Burkina Faso/Niger)*, Judgment of 16 April 2013, <http://www.icj-cij.org/docket/files/149/17306.pdf>; *Maritime Dispute (Peru v. Chile)*, Judgment of 27 January 2014, <http://www.icj-cij.org/docket/files/137/17930.pdf>.

¹⁵⁶ *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment of 13 July 2009, <http://www.icj-cij.org/docket/files/133/15321.pdf>.

¹⁵⁷ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment of 20 April 2010, <http://www.icj-cij.org/docket/files/135/15877.pdf>.

¹⁵⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Judgment of 1 April 2011, <http://www.icj-cij.org/docket/files/140/16398.pdf>. International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965.

¹⁵⁹ *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment of 5 December 2011, <http://www.icj-cij.org/docket/files/142/16827.pdf>.

¹⁶⁰ *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment of 3 February 2012, <http://www.icj-cij.org/docket/files/143/16883.pdf>.

involved in egregious acts including crimes of torture¹⁶¹, scientific whaling¹⁶², and requests for the Court to interpret its earlier judgments.¹⁶³ In addition to the *Kosovo Advisory Opinion*, assessed in a previous chapter of this study, the ICJ handed down an advisory opinion in connection with an employment dispute between an international civil servant and her employer, a UN specialized agency.¹⁶⁴

Similarly, the PCA, after a slump of several decades, has “heated up”¹⁶⁵ over the past years with a docket currently comprised of five inter-State cases alongside other categories of disputes (predominantly investor-State litigation¹⁶⁶). The period under review saw inter-State arbitration on diverse topics: maritime delimitation¹⁶⁷, water diversion to generate hydroelectric power¹⁶⁸, claims resulting from violations of international humanitarian law¹⁶⁹, etc.

¹⁶¹ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment of 20 July 2012.

¹⁶² *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment of 31 March 2014, <http://www.icj-cij.org/docket/files/148/18136.pdf>.

¹⁶³ *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America)*, Judgment of 19 January 2009, <http://www.icj-cij.org/docket/files/139/14939.pdf>; *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)*, Judgment of 11 November 2013, <http://www.icj-cij.org/docket/files/151/17704.pdf>.

¹⁶⁴ *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*, Advisory Opinion of 1 February 2012, <http://www.icj-cij.org/docket/files/146/16871.pdf>.

¹⁶⁵ D. Akande, ‘The Peace Palace Heats Up Again: But Is Inter-State Arbitration Overtaking the ICJ?’, *EJIL: Talk!*, 17 February 2014, <http://www.ejiltalk.org/the-peace-palace-heats-up-again-but-is-inter-state-arbitration-overtaking-the-icj/>. See also T.T. van den Hout, ‘Resolution of International Disputes: The Role of the Permanent Court of Arbitration – Reflections on the Centenary of the 1907 Convention for the Pacific Settlement of International Disputes’, 21 *Leiden Journal of International Law* (2008), pp. 643-661.

¹⁶⁶ In 2014 the PCA made world headlines when an arbitral tribunal under its auspices ordered Russia to pay majority shareholders over US\$50 billion in compensation for the indirect expropriation of Yukos. This was by far the largest damages award ever rendered in investment treaty arbitration. Three cases were brought under the Energy Charter Treaty, 17 December 1994. *Hulley Enterprises Limited (Cyprus) v. The Russian Federation*, Final Award of 18 July 2014, http://www.pca-cpa.org/showpage8d50.html?pag_id=1599; *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, Final Award of 18 July 2014, http://www.pca-cpa.org/showpage8d50.html?pag_id=1599; *Veteran Petroleum Limited (Cyprus) v. The Russian Federation*, Final Award of 18 July 2014, http://www.pca-cpa.org/showpage8d50.html?pag_id=1599.

¹⁶⁷ *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, Award of 7 July 2014, http://www.pca-cpa.org/showpage5a3b.html?pag_id=1376.

¹⁶⁸ *Indus Waters Kishenganga Arbitration (Pakistan v. India)*, Final Award of 20 December 2013, http://www.pca-cpa.org/showpageb106.html?pag_id=1392.

¹⁶⁹ *Eritrea-Ethiopia Claims Commission*, http://www.pca-cpa.org/showpaged21e.html?pag_id=1151.

Irrespective of this heightened activity, there are various ways in which a State can further strengthen the ICJ's and the PCA's capacity to serve the international community and expand their reach. This chapter aims to discuss such initiatives taken by the Netherlands.

1. Voluntary financial contributions

International courts and tribunals require considerable resources to carry out their tasks. The financing of these institutions is a significant sign of States' commitment to an effective system of international adjudication.¹⁷⁰ There are several sources of funding on which these institutions can rely, the most important being the contributions of Member States in accordance with a scale of assessment. Under Article 33 of the ICJ Statute, the Court's expenses are borne by the United Nations. The UN's budget is considered and approved by the UNGA.¹⁷¹ In a similar vein, the States who acceded to the 1899 and/or 1907 Conventions for the Pacific Settlement of International Disputes pay an annual contribution to the PCA.¹⁷²

Parties bear the costs of their own litigation expenses. Whereas the administrative costs of the ICJ are paid for by the UN, parties availing themselves of the PCA's services must cover these expenses, for instances the fees of the arbitrators.¹⁷³ Depending on the type of dispute and the complexity of the subject-matter, the price of international adjudication (which includes remuneration of a party's counsel as well as reimbursement of its experts and witnesses) can be cost-prohibitive for certain developing nations. With a view to alleviating the financial burden and encouraging greater use of third party binding dispute resolution, ICJ and PCA trust funds were created. Both are replenished through voluntary contributions.

¹⁷⁰ T. Ingadottir, 'The Financing of International Adjudication', in C.P.R. Romano, K.J. Alter & Y. Shany (eds.), *The Oxford Handbook of International Adjudication* (Oxford University Press, 2014), p. 594.

¹⁷¹ Art. 17 (1) UN Charter.

¹⁷² Art. 41 Convention for the Pacific Settlement of International Disputes, 18 October 1907 (Art. 20 Convention for the Pacific Settlement of International Disputes, 29 July 1899); Art. 50 Convention for the Pacific Settlement of International Disputes, 18 October 1907 (Art. 29 Convention for the Pacific Settlement of International Disputes, 29 July 1899).

¹⁷³ See e.g. Arts. 38-40 PCA Optional Rules for Arbitrating Disputes between Two States, http://www.pca-cpa.org/2STATEENGb4c6.pdf?fil_id=195.

The UN Secretary-General's Trust Fund to Assist States in the Settlement of Disputes Through the International Court of Justice¹⁷⁴ was established in 1989 to provide States with financial assistance for expenses incurred in connection with disputes submitted to the ICJ or the execution of judgments of the Court.¹⁷⁵ The Trust Fund operates in accordance with its Terms of Reference, which were revised in 2004 to broaden the class of cases eligible for financial support and enable applicant States to receive an advance on the awarded financial assistance.¹⁷⁶

During the evaluation period, Burkina Faso and Niger requested financial assistance from the Trust Fund to carry out the demarcation of a section of their common boundary in implementation of an ICJ ruling rendered in 2013.¹⁷⁷ It was recently reported in the media that Burkina Faso and Niger exchanged swaths of territory as required by the ICJ judgment, thus peacefully settling their long-standing border dispute.¹⁷⁸

Despite calls from the UNSG¹⁷⁹, the UNGA¹⁸⁰, and the International Law Association¹⁸¹, the Trust Fund remains under-used and under-funded. Moreover, the

¹⁷⁴ For further information, see P.H.F. Bekker, 'International Legal Aid in Practice: The ICJ Trust Fund', 87 *American Journal of International Law* (1993), pp. 659-668; T. Bien-Aimé, 'A Pathway to The Hague and Beyond: The United Nations Trust Fund Proposal', 22 *New York University Journal of International Law & Politics* (1990), pp. 671-708.

¹⁷⁵ *Revised Terms of Reference, Guidelines and Rules of the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice*, Annex, UN Doc. A/59/372 (2004), para. 6.

¹⁷⁶ *Id.*, paras. 6 (a) (ii) and 13.

¹⁷⁷ The application is currently being reviewed by a panel of experts. Report of the Secretary-General, *Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice*, UN Doc. A/70/327 (2015), para. 4; Report of the Secretary-General, *Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice*, UN Doc. A/69/337 (2014), para. 4. See *Frontier Dispute (Burkina Faso/Niger)*, Judgment of 16 April 2013, <http://www.icj-cij.org/docket/files/149/17306.pdf>.

¹⁷⁸ 'Burkina Faso and Niger exchange 18 towns to settle border dispute', *The Guardian*, 8 May 2015, <http://www.theguardian.com/world/2015/may/08/burkina-faso-niger-exchange-18-towns-settle-border-dispute>.

¹⁷⁹ See e.g. Report of the Secretary-General, *Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice*, UN Doc. A/70/327 (2015), para. 8; Report of the Secretary-General, *Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice*, UN Doc. A/69/337 (2014), para. 8; Report of the Secretary-General, *Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice*, UN Doc. A/68/349 (2013), para. 8; Report of the Secretary-General, *Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice*, UN Doc. A/67/494 (2012), para. 8; Report of the Secretary-General, *Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice*, UN Doc. A/66/295 (2011), para. 8; Report of the Secretary-General, *Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of*

Trust Fund's resources have decreased since its inception.¹⁸² Given the positive role the Trust Fund can play in resolving disputes in all parts of the world, the Netherlands should consider making voluntary contributions.

The PCA Financial Assistance Fund for Settlement of International Disputes was established by the PCA Secretary-General with the approval of the Administrative Council to help developing countries defray some of the expenses associated with international arbitration or other means of dispute resolution.¹⁸³

In order to qualify for aid, a State must *inter alia* be a State Party to the Hague Convention of 1899 or 1907 and feature on the DAC List of Aid Recipients¹⁸⁴ maintained by the Organization for Economic Co-operation and Development (OECD). A Board of Trustees decides on the requests for financial assistance, while the PCA International Bureau acts as implementing office. The Fund is financed through voluntary contributions by States, inter-governmental organizations, national institutions, as well as natural and legal persons.¹⁸⁵

In the past the Netherlands has made voluntary contributions to the Fund as well as a special contribution to the PCA "for purposes of promoting the use of the Fund among certain developing countries."¹⁸⁶ Annual Reports of the PCA note that the

Justice, UN Doc. A/65/309 (2010), para. 8; Report of the Secretary-General, *Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice*, UN Doc. A/64/308 (2009), para. 8.

¹⁸⁰ UNGA Res. 61/37, *Commemoration of the Sixtieth Anniversary of the International Court of Justice* (2006), para. 5: "[The General Assembly] [c]alls upon States to consider means of strengthening the Court's work, including by supporting the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice on a voluntary basis, in order to enable the Fund to carry on and to strengthen its support to the countries which submit their disputes to the Court."

¹⁸¹ International Law Association, American Branch, Committee on Transnational Dispute Resolution, 'A Study and Evaluation of the UN Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice', 1 *Chinese Journal of International Law* (2002), pp. 234-279.

¹⁸² See the Secretary-General Reports cited in footnote 179.

¹⁸³ Financial Assistance Fund, http://www.pca-cpa.org/showpage33df.html?pag_id=1179.

¹⁸⁴ This is a list of all countries and territories eligible to receive official development assistance from the OECD (low and middle income countries with some exceptions). See OECD, 'DAC List of ODA Recipients', <http://www.oecd.org/dac/stats/daclist.htm>.

¹⁸⁵ Permanent Court of Arbitration Financial Assistance Fund for Settlement of International Disputes, Terms of Reference and Guidelines (as approved by the Administrative Council on December 11, 1995), http://www.pca-cpa.org/FUNDENG4a6a.pdf?fil_id=199.

¹⁸⁶ *Annual Report 2011*, paras. 24-25, http://www.pca-cpa.org/showpagea5b0.html?pag_id=1069.

Netherlands made additional contributions to the Fund in 2009¹⁸⁷, 2010¹⁸⁸, 2011¹⁸⁹ and 2012¹⁹⁰. The Fund has made disbursements to States located in Asia, Central America, South America and Africa.¹⁹¹

2. Handbook on Accepting the Jurisdiction of the International Court of Justice

In the run-up to the 2012 UNGA High-level Meeting on the Rule of Law, UN Member States were invited to make voluntary pledges aimed at strengthening the rule of law based on their respective national priorities.¹⁹² On 20 September 2012, the Netherlands made a number of such pledges, including a commitment to work together with other Member States and the UN Office of Legal Affairs (part of the UN Secretariat) on a publication intended to assist States wishing to accept the jurisdiction of the ICJ or submit disputes to it.¹⁹³ The initiative was led by Switzerland and the Netherlands, who were joined by Botswana, Japan, Lithuania, the United Kingdom and Uruguay. The Netherlands helped get more States on board the project, saw to the technical quality of the text and supported the endeavour financially.¹⁹⁴

The efforts of these Member States and the UN Office of Legal Affairs culminated in the *Handbook on Accepting the Jurisdiction of the International Court of Justice* with forewords by the sponsoring States and the Under-Secretary-General for Legal Affairs and UN Legal Counsel.¹⁹⁵ The *Handbook* explains the advantages of resorting to the ICJ and takes the reader through the process of accepting its jurisdiction. Examples taken from actual State practice are presented, as are model clauses

¹⁸⁷ Annual Report 2009, para. 26, http://www.pca-cpa.org/showpagea5b0.html?pag_id=1069.

¹⁸⁸ Annual Report 2010, para. 25, http://www.pca-cpa.org/showpagea5b0.html?pag_id=1069.

¹⁸⁹ Annual Report 2011, para. 24, http://www.pca-cpa.org/showpagea5b0.html?pag_id=1069.

¹⁹⁰ Annual Report 2012, p. 19, http://www.pca-cpa.org/showpagea5b0.html?pag_id=1069.

¹⁹¹ Annual Report 2014, p. 37, http://www.pca-cpa.org/showpagea5b0.html?pag_id=1069.

¹⁹² Report of the Secretary-General, *Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels*, UN Doc. A/66/749 (2012), paras. 68-70. See also R. Janse, ‘The UNGA Resolutions on the Rule of Law at the National and International Levels, 2006–Post 2015’, 18 *Max Planck Yearbook of United Nations Law* (2014), pp. 264–265.

¹⁹³ Pledges by the Netherlands, High-level Meeting on the Rule of Law, 2012, <http://www.unrol.org/doc.aspx?d=3202>.

¹⁹⁴ Interview with the author of the present report.

¹⁹⁵ *Handbook on Accepting the Jurisdiction of the International Court of Justice: Model Clauses and Templates*, Annex, UN Doc. A/68/963 (2014).

enabling the submission of cases and template declarations accepting the Court's jurisdictional as compulsory. The target audience is broad, ranging from MFA legal advisers to members of delegations at treaty conferences. The *Handbook* is available in all official languages of the UN (Arabic, Chinese, English, French, Russian and Spanish) and may be consulted in brochure format or on the website of the ICJ.¹⁹⁶

The arrival of this new *Handbook*, albeit a laudable and important initiative, should not detract from the need to update pre-existing UN publications. The *Handbook on the Peaceful Settlement of Disputes between States* (1992), a much-used manual compiled by the UN Office of Legal Affairs, has become outdated.¹⁹⁷ The same can be said (to a lesser degree) of the *Final Clauses of Multilateral Treaties Handbook* (2003), a chapter of which provides advice on how to draft dispute settlement clauses.¹⁹⁸ Previous attempts made by the Netherlands to revamp the first of these manuals were ineffective.¹⁹⁹ The successful launch of the *Handbook on Accepting the Jurisdiction of the International Court of Justice* could however serve as stepping stone to gather support for an overhaul of out-of-date UN publications in the field of dispute resolution.²⁰⁰

3. Nominations and elections

This section discusses the nomination of persons to lists of arbitrators/conciliators and the selection of judges to sit in permanent international courts and tribunals. A fair number of treaties and other instruments provide for lists of arbitrators and/or conciliators who may be tapped with a view to settling an international dispute. By nominating individuals to such lists, a State can send a clear signal of its belief in

¹⁹⁶ *Id.*

¹⁹⁷ *Handbook on the Peaceful Settlement of Disputes between States*, o.c.

¹⁹⁸ United Nations Office of Legal Affairs – Treaty Section (ed.), *Final Clauses of Multilateral Treaties Handbook* (United Nations, 2003), pp. 88-95.

¹⁹⁹ DMM/MP-283/2013. On the most recent proposal (by the Russian Federation) to update the *Handbook on the Peaceful Settlement of Disputes between States* (and to establish a new website dedicated to this topic), see Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, UN Doc. A/70/33 (2015), paras. 53-55; Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, UN Doc. A/69/33 (2014), paras. 48-53.

²⁰⁰ Such an initiative could be taken in response to the UNGA's encouragement of those States that have made voluntary pledges to strengthen the rule of law "to exchange information, knowledge and best practices". UNGA Res. 69/123, *The Rule of Law at the National and International Levels* (2014), para. 2.

inter-state litigation. The Committee of Ministers of the COE, following the CAHDI's advice, adopted a recommendation in 2008 urging Member States to keep track of these lists, consider nominating international arbitrators and conciliators and keep their nominations up to date.²⁰¹

The Dutch Government has seized the opportunity to make such nominations. In 2014, the Netherlands renewed the 6-year term of two Members of the PCA and appointed two new persons, i.e. the maximum number of individuals each Member State may nominate.²⁰² The PCA's Specialized Panels of Arbitrators and Scientific Experts, established pursuant to its Optional Rules for Arbitration of Disputes Relating to Outer Space Activities, include persons appointed by the Netherlands in 2012 and 2014 respectively.²⁰³ The list of arbitrators drawn up and maintained by the UNSG to settle disputes concerning the UNCLOS features four persons appointed by the Netherlands.²⁰⁴

The Netherlands has not followed suit in relation to other lists as will be demonstrated through several examples. Following the adoption of the PCA's Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment, Specialized Panels of Arbitrators and Scientific Experts were set up from which parties to a dispute may choose to settle their disagreement. The most recent lists of these panels indicate that the (renewable) mandates of the persons nominated by the Netherlands in 2001 have expired.²⁰⁵ Similarly, the nominations of the individuals appointed by the Dutch Government to the list of conciliators under the 1969 Vienna Convention on the Law of Treaties were never renewed nor have they been replaced

²⁰¹ Recommendation CM/Rec. (2008) 9 of the Committee of Ministers to Member States on the Nomination of International Arbitrators and Conciliators, 2 July 2008, http://www.coe.int/t/dlapil/cahdi/Source/Adopted_texts/Recommendation_2008_9_EN.pdf; M. Wood, 'European Perspectives on Inter-State Litigation', in N. Klein (ed.), *Litigating International Law Disputes: Weighing the Options*, Cambridge University Press, 2014, p. 136.

²⁰² Permanent Court of Arbitration, 'Members of the Court - Panel of Arbitrators', http://www.pca-cpa.org/showpaged254.html?pag_id=1041.

²⁰³ Permanent Court of Arbitration, 'Panels of Arbitrators and Experts for Space-related Disputes', http://www.pca-cpa.org/showpage1e12.html?pag_id=1484.

²⁰⁴ Annex VII UNCLOS; United Nations Division for Ocean Affairs and the Law of the Sea, 'Lists of Conciliators and Arbitrators nominated under Article 2 of Annexes V and VII to the Convention', http://www.un.org/Depts/los/settlement_of_disputes/conciliators_arbitrators.htm.

²⁰⁵ Permanent Court of Arbitration, 'Panels of Arbitrators and Experts for Environmental Disputes', http://www.pca-cpa.org/showpage4fd6.html?pag_id=1042.

with new persons.²⁰⁶ In contrast with its appointments to the list of UNCLOS arbitrators, the Netherlands has made little use of its right to nominate persons to other lists which may relied upon for the purpose of resolving UNCLOS-related disputes, i.e. conciliators²⁰⁷ and experts for special arbitration.²⁰⁸

Turning to permanent international court and tribunals, the selection of judges varies from one institution to another. As a general rule, however, States are the driving force behind this process. This certainly holds true for the World Court. The fifteen Members of the ICJ are elected by the UNGA and the UNSC from a list of persons nominated by the PCA national groups.²⁰⁹ Candidates are successfully elected when they receive an absolute majority of votes in the UNGA and the UNSC. It should be noted that the permanent members of the UNSC cannot exercise their veto power in this regard.²¹⁰

The ICJ Statute provides that the Members of the Court are “elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.”²¹¹ What is more, electors must “bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal

²⁰⁶ Annex Vienna Convention on the Law of Treaties, 23 May 1969; United Nations Treaty Series, ‘Vienna Convention on the Law of Treaties, Vienna, 23 May 1969’, https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&lang=en.

²⁰⁷ Annex V UNCLOS; United Nations Division for Ocean Affairs and the Law of the Sea, ‘Lists of Conciliators and Arbitrators nominated under Article 2 of Annexes V and VII to the Convention’, http://www.un.org/Depts/los/settlement_of_disputes/conciliators_arbitrators.htm.

²⁰⁸ Annex VIII UNCLOS; United Nations Division for Ocean Affairs and the Law of the Sea, ‘List of Experts for the purposes of Article 2 of Annex VIII (Special Arbitration) to the Convention’, http://www.un.org/Depts/los/settlement_of_disputes/experts_special_arb.htm. A list of experts is established and maintained in four fields: (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping. State Parties are entitled to nominate two experts in each field. The Netherlands appears only to have nominated one individual to the list of experts in the field of marine scientific research and made no such appointments to the three other lists.

²⁰⁹ Art. 4 ICJ Statute. In the case of UN Member States not represented in the PCA, candidates are nominated by national groups appointed for this purpose by their governments.

²¹⁰ Art. 10 ICJ Statute.

²¹¹ Art. 2 ICJ Statute.

systems of the world should be assured.”²¹² These requirements are manifestly geared towards having a representative bench of high standing and integrity.

In practice, however, the judicial selection process is also influenced by other, political considerations. One of the more regrettable features of this politicization is the prevalence of “horse trading” among certain States. In its most common form, this amounts to a State voting for another State’s candidate in return for a promise of support for their own candidate(s) in other elections.²¹³ The Netherlands has adopted a principled approach in this area: it does not engage in vote trading nor does it reveal its preferred candidate(s) (save in instances where the Netherlands endorses candidates of its own).²¹⁴ In so doing, the Netherlands MFA has developed a best practice for appointing the most meritorious hopefults to international courts and tribunals.²¹⁵

4. Exploring new areas for the PCA

For some years now, certain NGOs have been advocating arbitration as a mechanism for dealing with sovereign debt disputes. A group of these NGOs sent their arbitration-related proposals to the Netherlands Minister for Development Cooperation. At the request of the Netherlands MFA, the PCA agreed to further examine its potential role in adjudicating sovereign insolvency.²¹⁶

To this end a Steering Committee of the Netherlands Government and the Permanent Court of Arbitration was established in 2009. Two years later they convened an Advisory Group composed of experts from the IMF, the World Bank, the OECD, the Paris Club, global law firms and universities. In 2012, the Steering Committee, having taken into account the views of the Advisory Group, drafted a report entitled

²¹² Art. 9 ICJ Statute.

²¹³ O. Eldar, ‘Vote-trading in International Institutions’, 19 *European Journal of International Law* (2008), p. 24.

²¹⁴ Interview with the author of the present report.

²¹⁵ See also International Law Association Study Group on the Practice and Procedure of International Courts and Tribunals/Project on International Courts and Tribunals, ‘The Burgh House Principles On The Independence Of The International Judiciary’, http://www.ucl.ac.uk/laws/cict/docs/burgh_final_21204.pdf (section 2 contains recommendations for improving the procedures of nomination, election and appointment).

²¹⁶ Y. Li, ‘Playing Sovereign Debt Creditors’ Orchestra: Inter-Creditor Issues in Sovereign Debt Restructuring’, 3 *International Insolvency Law Review* (2013), pp. 243-245; DMM/IF 166/2012.

“Arbitration and Sovereign Debt”. The report concluded that the current system, although not perfect, did function better than is often assumed and that wider use of arbitration to tackle sovereign debt would be a challenging undertaking.²¹⁷ Notwithstanding the findings of the Steering Committee and Advisory Group, the Netherlands’ involvement in the initiative shows support for exploring new paths for the PCA.

²¹⁷ *Id.*

VI. CONCLUSION

The past is replete with Dutch initiatives to promote international dispute settlement. To name but one prominent example, it was – in part – thanks to the Dutch Government that the PCA was able to acquire observer status in the UNGA in 1993.²¹⁸ The present study demonstrates that the period 2009-2014 is no exception to this rule. The willingness of the Netherlands to promote the ICJ and the PCA, make use of their services and enhance their capacity is borne out in practice. The fact that certain aspects of international adjudication still leave something to be desired is not attributable to a single State. Revisiting the ICJ's predicament, the fact that less than forty per cent of the international community of States has accepted the World Court's jurisdiction as compulsory is regrettable. Yet, this is not for want of trying on the part of the Netherlands. The Dutch Government has demonstrably joined the ranks of the UNSC²¹⁹, the UNGA²²⁰, the UNSG²²¹, the COE²²² and learned societies²²³ in their attempts to convince States to recognize the compulsory jurisdiction of the ICJ.

²¹⁸ See UNGA Res. 48/3, *Observer Status for the Permanent Court of Arbitration in the General Assembly* (1993); Report of the Secretary-General, *United Nations Decade of International Law*, Addendum, UN Doc. A/49/323/Add.2 (1994) (discussing this and other Dutch plans to promote peaceful dispute settlement and revitalize the ICJ and PCA).

²¹⁹ Statement by the President of the Security Council, UN Doc. S/PRST/2010/11 (2010); Statement by the President of the Security Council, UN Doc. S/PRST/2012/1 (2012).

²²⁰ See e.g. UNGA Res. 171 (II), *Need for Greater Use by the United Nations and its Organs of the International Court of Justice* (1947), para. 1; UNGA Res. 3232 (XXIX), *Review of the Role of the International Court of Justice* (1974), para. 1; UNGA Res. 37/10, Annex, *Manila Declaration on the Peaceful Settlement of International Disputes* (1982), II, para. 5 (b) (ii); UNGA Res. 60/1, *2005 World Summit Outcome* (2005), para. 134 (f); UNGA Res. 61/37, *Commemoration of the Sixtieth Anniversary of the International Court of Justice* (2006), para. 4; UNGA Res. 62/70, *The Rule of Law at the National and International Levels* (2007), preamble; UNGA Res. 63/128, *The Rule of Law at the National and International Levels* (2008), preamble; UNGA Res. 66/102, *The Rule of Law at the National and International Levels* (2011), preamble; UNGA Res. 67/1, *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels* (2012), para. 31; UNGA Res. 68/116, *The Rule of Law at the National and International Levels* (2013), preamble; UNGA Res. 69/123, *The Rule of Law at the National and International Levels* (2014), preamble.

²²¹ See e.g. Report of the Secretary-General pursuant to the Statement adopted by the Summit Meeting of the Security Council on 31 January 1992, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, UN Doc. A/47/277-S/24111 (1992), para. 39 (a); Report of the Secretary-General, *Prevention of Armed Conflict*, UN Doc. A/55/985-S/2001/574 (2001), para. 50; Report of the Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, UN Doc. A/59/2005 (2005), para. 139; Report of the Secretary-General, *Strengthening and coordinating United Nations rule of law activities*, UN Doc. A/63/226 (2008), para. 76 (b); Report of the Secretary-General, *Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels*, UN Doc. A/66/749 (2012), para. 15 (a) and (b); Report of the

Despite the Netherlands' established track record, there is still room for improvement as far as peaceful dispute settlement is concerned. The following is a list of suggestions, most of which are based on findings presented earlier in this study:

- *Bilateral diplomacy*: developing a consistent policy for addressing the potential of legal means of dispute settlement in bilateral talks should be contemplated.
- *Highlighting reservations to declarations*: the Netherlands generally calls for recognition of the ICJ's jurisdiction as compulsory without further specification. It is worth exploring the possibility of advocating the removal and prevention of reservations to declarations which exceedingly restrict the scope of the Court's jurisdiction.
- *ICJ Trust Fund*: in tandem with its sustained support for the PCA's Fund, the Netherlands should equally consider making voluntary contributions to the ICJ. The correspondence between the timing of the UNSG's call for contributions and the deadlines for apportioning the Netherlands MFA's resources should be examined in this regard.
- *Inter-departmental and inter-ministerial co-operation*: co-operation between MFA departments with relevant expertise and with other Ministries is essential to promoting and strengthening peaceful dispute settlement. Interviews with the author revealed that in certain respects this could be improved, particularly as regards the MFA Legal Affairs Department, which was neither fully involved nor consulted on a number of matters related to the ICJ and the PCA.
- *Netherlands MFA website*: much of the material compiled in this study was not easily accessible or simply could not be found on the website of the Netherlands MFA. It is also unfortunate that the webpage dedicated to the

Secretary-General, *Strengthening and coordinating United Nations rule of law activities*, UN Doc. A/67/290 (2012), para. 13; Report of the Secretary-General, *Strengthening and coordinating United Nations rule of law activities*, UN Doc. A/68/213 (2013), para. 15; Report of the Secretary-General, *Strengthening and coordinating United Nations rule of law activities*, UN Doc. A/68/213/Add.1 (2014), para. 84; Report of the Secretary-General, *Strengthening and coordinating United Nations rule of law activities*, UN Doc. A/69/181 (2014), para. 11.

²²² Recommendation CM/Rec. (2008) 8 of the Committee of Ministers to Member States on the Acceptance of the Jurisdiction of the International Court of Justice, 2 July 2008, http://www.coe.int/t/dlapil/cahdi/Source/Adopted_texts/Recommendation_2008_8_EN.pdf.

²²³ See e.g. Institute of International Law, Res.: *Compulsory Jurisdiction of International Courts and Tribunals* (Neuchâtel, 1959).

international legal order does not even mention the ICJ and the PCA (only international *criminal* tribunals are discussed).²²⁴ It would be useful for promotional purposes to create a separate section on the website dedicated to the peaceful settlement of international disputes and the Netherlands' actions and policies in this field.

- *Updating UN manuals:* having successfully launched the *Handbook on Accepting the Jurisdiction of the International Court of Justice*, it would be beneficial to muster support for updating popular, yet outdated UN manuals, in particular the *Handbook on the Peaceful Settlement of Disputes between States* and the *Final Clauses of Multilateral Treaties Handbook*.

²²⁴ Government of the Netherlands, 'Nederland draagt bij aan internationale rechtsorde', <http://www.rijksoverheid.nl/onderwerpen/internationale-vrede-en-veiligheid/internationale-rechtsorde>.

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