

*Enhancing the Role of the Permanent Court of Arbitration in Environmental, Social and Governance
Disputes*

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Enhancing the Role of the Permanent Court of Arbitration in Environmental, Social, and Governance Disputes

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Abstract

This paper critically examines the role of the Permanent Court of Arbitration (PAC) in Environmental, Social and Governance (ESG) disputes. The paper explores ESG disputes. It posits that ESG disputes can be effectively managed through arbitration among other Alternative Dispute Resolution (ADR) processes. The paper further argues that PAC is a viable international forum for managing ESG disputes through arbitration alongside other ADR processes. It explores the progress made towards managing ESG disputes through the PAC and challenges thereof. The paper also suggests reforms towards enhancing the role of the PAC in ESG disputes.

1.0 Introduction

The Permanent Court of Arbitration (PAC) is an intergovernmental organization providing a variety of dispute resolution services to the international community¹. It was established by the *Convention for the Pacific Settlement of International Disputes*², concluded at The Hague in 1899 during the first Hague Peace Conference. Article 20 of the Convention formally establishes the PCA, and provides that:

'With the object of facilitating an immediate recourse to arbitration for international differences which it has not been possible to settle by diplomacy, the signatory Powers undertake to organize a Permanent Court of Arbitration, accessible at all times and

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¹ Permanent Court of Arbitration., Available at <https://pca-cpa.org/home/> (Accessed on 24/06/2024)

² Convention for the Pacific Settlement of International Disputes., Available at <https://docs.pca-cpa.org/2016/01/1899-Convention-for-the-Pacific-Settlement-of-International-Disputes.pdf> (Accessed on 24/06/2024)

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operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention'

The Convention further stipulates that PAC shall be competent for all arbitration cases unless the parties agree to institute a special tribunal³. PCA provides arbitration services in international disputes involving states, state entities, international organizations and private parties⁴. However, the functions of PAC are not limited to international arbitration⁵. It also supports other forms of peaceful resolution of international disputes, including mediation, conciliation, and other forms of Alternative Dispute Resolution (ADR)⁶.

It has been noted that the PCA provides diverse dispute resolution services, providing administrative support in inter-state, investment and contractual international arbitrations through case administration, acting as the appointing authority, or designating another appointing authority⁷. In addition, its flexible mandate allows it to administer proceedings of different nature other than arbitration, including conciliations, expert determinations, and fact-finding commissions⁸. PCA has been hailed for its contribution to the continuous and steady growth of arbitration as a reliable dispute resolution mechanism for both investment and commercial cases⁹.

³ Ibid, article 21

⁴ Permanent Court of Arbitration., Op Cit

⁵ Ibid

⁶ Ibid

⁷ Moreno. M. B., 'From its Origins to Actuality: The Permanent Court of Arbitration' Available at <https://arbitrationblog.kluwerarbitration.com/2023/09/23/from-its-origins-to-actuality-the-permanent-court-of-arbitration/#:~:text=The%20PCA%20provides%20diverse%20dispute,or%20designating%20another%20a,ppointing%20authority>. (Accessed on 24/06/2024)

⁸ Ibid

⁹ Ibid

This paper critically examines the role of PAC in Environmental, Social and Governance (ESG) disputes. The paper explores ESG disputes. It posits that ESG disputes can be effectively managed through arbitration among other ADR processes. The paper further argues that PAC is a viable international forum for managing ESG disputes through arbitration alongside other ADR processes. It explores the progress made towards managing ESG disputes through the PAC and challenges thereof. The paper also suggests reforms towards enhancing the role of the PAC in ESG disputes.

2.0 Environmental, Social, and Governance Disputes

ESG refers to a set of standards used to measure the impact of an organization on the environment and society¹⁰. It has also been described as a framework that helps stakeholders understand how an organization is managing risks and opportunities related to environmental, social, and governance criteria¹¹. ESG takes the holistic view that sustainability extends beyond just environmental issues¹². Consequently, ESG seeks to integrate environmental factors including climate change concerns, energy efficiency, waste management, pollution control, biodiversity conservation; social factors including diversity, inclusivity, and human rights; and governance tenets such as sound board management practices and shareholder rights in order to achieve sustainability¹³.

ESG flows from responsible investment¹⁴. It is usually a standard and strategy used by investors to evaluate corporate behavior and future financial performance¹⁵. It has been

¹⁰ IBM., 'What is Environmental, Social and Governance (ESG)?' Available at <https://www.ibm.com/topics/environmental-social-and-governance> (Accessed on 25/06/2024)

¹¹ Peterdy. K., & Miller. N., 'ESG (Environmental, Social, & Governance)' Available at <https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/> (Accessed on 25/06/2024)

¹² Ibid

¹³ IBM., 'What is Environmental, Social and Governance (ESG)?' Op Cit

¹⁴ Li. T. T et al., 'ESG: Research Progress and Future Prospects' Available at <https://pdfs.semanticscholar.org/0dd4/941ebea33330210daff5f37a1c8cdd0547d7.pdf> (Accessed on 25/06/2024)

¹⁵ Ibid

noted that as an investment concept for evaluating the Sustainable Development of enterprises, the three basic factors of ESG are the key points to be considered in the process of investment analysis and decision making¹⁶. In addition, ESG tenets help to measure the sustainability and social impact of business activities¹⁷. ESG therefore seeks to achieve sustainable, responsible and ethical investment by incorporating Environmental, Social and Governance concerns in corporate decision making¹⁸. By integrating Environmental, Social and Governance factors in corporate activities, ESG also seeks to enhance the sustainability and social impact of businesses¹⁹.

The concept of ESG has grown in recent years with a growing number of institutions and organizations embracing ESG tenets in their corporate activities and investment decision making²⁰. The growth of ESG has resulted in improved financial performance for firms²¹. It has been noted that a strong ESG proposition helps companies tap new markets and expand into existing ones²². Further, ESG is associated with cost reductions such as low energy consumption and reduced water intake²³. It also boosts employee motivation and attracts talent to organizations through greater social credibility²⁴. ESG also enhances investment returns by better allocating capital for the long term²⁵.

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Stuart. L.G et al., 'Firms and Social Responsibility: A Review of ESG and CSR Research in Corporate Finance.' *Journal of Corporate Finance* 66 (2021): 101889.

¹⁹ Li. T. T et al., 'ESG: Research Progress and Future Prospects' Op Cit

²⁰ Organisation for Economic Co-operation and Development., 'Environmental Social and Governance (ESG) Investing' available at <https://www.oecd.org/finance/esg-investing.htm> (Accessed on 25/06/2024)

²¹ Henisz. W., Koller. T., & Nuttall. R., 'Five ways that ESG creates value' *McKinsey Quarterly*, November, 2019

²² Ibid

²³ Ibid

²⁴ Ibid

²⁵ Ibid

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However, the growth of ESG has also led to a rise in ESG related disputes. There has been significant growth in disputes related to environmental, social, and governance issues with companies, investors, and regulators seeking to hold each other accountable for their ESG commitments²⁶. For example, due to the growing concerns about climate change and environmental degradation, there has been a surge in disputes related to environmental damage, carbon emissions, and compliance with environmental regulations²⁷. Companies are facing claims from investors, communities and governments for failing to meet their environmental obligations²⁸. Further, there has been a rise in disputes under the S tenet of ESG with organizations being sued for violations of human rights in their supply chains, unfair labor practices, or negative impacts on local communities²⁹. Greenwashing claims have also been on the rise with investors and consumers accusing companies of misleading them about their ESG practices³⁰. In addition, the inclusion of ESG clauses in commercial contracts not only points to the importance of ESG concerns to companies but it also serves as potential source of disputes where such considerations are not complied with³¹.

ESG is therefore a key source of disputes. ESG disputes can encompass conduct arising out of, for instance, a corporate governance dispute, to a labour matter involving the breach of a worker's human rights, to a mass tort claim arising out of an environmental

²⁶ Timken. N., 'ESG Considerations in International Arbitration' Available at <https://www.linkedin.com/pulse/esg-considerations-international-arbitration-nelson-ed-ward--pkeie/> (Accessed on 25/06/2024)

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

³¹ The ALP Review., 'The Importance of ESG and its effect on International Arbitration' available at <https://www.alp.company/sites/default/files/ALP%20Review%20-%20The%20Importance%20of%20ESG%20and%20its%20effect%20on%20International%20Arbitration.pdf> (Accessed on 25/06/2024)

damage among others³². Effective management of ESG disputes is key in fostering sustainability and preserving the reputation and profitability of businesses³³.

3.0 The Role of the Permanent Court of Arbitration in Environmental, Social, and Governance Disputes

ADR techniques including arbitration are viable in managing ESG disputes³⁴. The procedural flexibility, the high levels of specialization among arbitrators and the possibility of executing the awards in practically any country in the world under the New York Convention are some of the key attributes of arbitration that make it an attractive and effective method for managing ESG disputes³⁵. Arbitration allows parties to select arbitrators with relevant expertise on the dispute at hand and for the tailoring of the proceeding to the needs of each case³⁶. This is particularly relevant in ESG disputes, where the issues at stake, such as climate change, are often legally and technically complex therefore requiring a tribunal with requisite competence in such matters³⁷. In addition, it is common for ESG disputes to contain a strong international component³⁸. This is evident in cases of organizations which have supply chains operating across

³² International Bar Association., 'Report on Use of ESG Contractual Obligations and Related Disputes' Available at <https://www.ibanet.org/document?id=report-on-use-of-ESG-contractual-obligations> (Accessed on 25/06/2024)

³³ Rathi. S., 'Cracking The ESG Conundrum: Is Arbitration The Key To Resolution Of ESG Disputes?' Available at <https://www.mondaq.com/india/arbitration--dispute-resolution/1375770/cracking-the-esg-conundrum-is-arbitration-the-key-to-resolution-of-esg-disputes#:~:text=ESG%20issues%20usually%20involve%20multiple,arbitral%20awards%20across%20multiple%20jurisdictions> (Accessed on 25/06/2024)

³⁴ Muigua. K., 'Infusing Environmental, Social, and Governance Tenets into Arbitration and Alternative Dispute Resolution' Available at <https://kmco.co.ke/wp-content/uploads/2024/04/Infusing-Environmental-Social-and-Governance-Tenets-into-Arbitration-and-Alternative-Dispute-Resolution.pdf> (Accessed on 25/06/2024)

³⁵ The Role of Arbitration in ESG Disputes., Available at https://www.vonwobeser.com/index.php/publication?p_id=1650

³⁶ The Rise of ESG Disputes and the Role of Arbitration in Resolving them., Available at <https://www.financierworldwide.com/the-rise-of-esg-disputes-and-the-role-of-arbitration-in-resolving-them> (Accessed on 25/06/2024)

³⁷ Ibid

³⁸ Ibid

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different countries³⁹. Managing such disputes requires an analysis of international law as well as the laws of different nations and localities⁴⁰. Arbitration is therefore suitable in managing such disputes due to its transnational applicability and ease of enforcement of decisions under the New York Convention⁴¹.

Consequently, arbitration is being utilized in a number of ESG disputes. For example, it has been noted that arbitration is the most utilized process to manage construction, engineering, and energy disputes⁴². These areas are, by their nature, crucial to national policies to combat climate change and to guarantee environmental protection and human rights, therefore confirming the natural existence of arbitration in ESG disputes⁴³.

Arbitration has also been embraced in managing climate change related disputes⁴⁴. It has been noted that arbitration has been utilized to determine climate change related disputes arising under the United Nations Framework Convention on Climate Change (UNFCCC's) Green Climate Fund and the Kyoto Protocol⁴⁵. A broad range of climate change related initiatives concerning renewable energy, climate change adaptation and mitigation, with diverse funding from international, domestic and business sources can be effectively managed through arbitration⁴⁶. Among the key benefits of arbitration in climate change disputes include neutrality of forum, cross border recognition and

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

⁴² The Role of Arbitration in ESG Disputes., Op Cit

⁴³ Ibid

⁴⁴ Muigua. K., 'Utilizing Alternative Dispute Resolution in Climate Change Disputes' Available at <https://kmco.co.ke/wp-content/uploads/2024/03/Utilizing-Alternative-Dispute-Resolution-in-Climate-Change-Disputes.pdf> (Accessed on 25/06/2024)

⁴⁵ International Chamber of Commerce., 'Resolving Climate Change Related Disputes through Arbitration and ADR' Available at <https://iccwbo.org/wp-content/uploads/sites/3/2019/11/icc-arbitration-adr-commission-report-on-resolving-climate-change-related-disputes-english-version.pdf> (Accessed on 25/06/2024)

⁴⁶ Ibid

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enforcement of awards, expertise, and flexibility of procedure⁴⁷. It has been noted that the international dimension of climate change and the likely presence of states or state entities as parties to climate change disputes make international arbitration a suitable forum for the resolution of a variety of such disputes⁴⁸.

Arbitration is also a viable mechanism in managing contractual disputes covering ESG tenets⁴⁹. There has been an increased adoption of ESG specific requirements in commercial contracts in recent years driven by reference to increasing legislation and regulation on ESG and voluntary ESG standards⁵⁰. The purpose of such clauses is not only to avoid harmful business practices, but also to improve stakeholder relationships, achieve wider reputational benefits and ensure regulatory compliance⁵¹. Disputes may arise over the interpretation and enforcement of these clauses, as parties seek to hold each other accountable for their ESG commitments⁵². This allows for the utilization of arbitration in managing such disputes

Arbitration is also ideal in managing investment treaty disputes⁵³. It has been observed that ESG considerations are also influencing investment treaty disputes⁵⁴. For example, investors may bring claims against host states for measures that negatively impact the environmental or social performance of their investments⁵⁵. On the other hand, states may defend their regulatory measures as necessary to protect the environment or

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ International Bar Association., 'Report on use of ESG Contractual Obligations and Related Disputes' Available at <https://www.ibanet.org/document?id=report-on-use-of-ESG-contractual-obligations> (Accessed on 25/06/2024)

⁵⁰ Ibid

⁵¹ Ibid

⁵² Ibid

⁵³ Timken. N., 'ESG Considerations in International Arbitration' Op Cit

⁵⁴ Ibid

⁵⁵ Ibid

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promote social welfare⁵⁶. Such disputes can be effectively managed under the auspices of investment treaty arbitration⁵⁷.

Arbitration is therefore a viable process in managing ESG disputes. Other ADR processes such as mediation can also be effectively utilized in managing ESG disputes⁵⁸. Applying mediation in ESG related disputes can offer a quick, flexible, consensual, and win-win solution based on the mutually accepted interests of the parties therefore enhancing a sustainability-oriented business culture⁵⁹. Mediation is suitable in managing ESG disputes where there is need to preserve consumer and business relationships⁶⁰. Mediation plays a key role by offering an efficient and collaborative means to resolve disputes quickly and fairly⁶¹. It has been noted that by opting for mediation, companies can avoid protracted litigation, reduce legal costs, and preserve valuable business relationships⁶². Mediation also promotes transparency and accountability, two essential pillars under the Governance 'G' tenet of ESG⁶³. By resolving disputes in an open and transparent manner, companies demonstrate their commitment to good governance and accountability⁶⁴. Mediation can also foster environmental sustainability by allowing businesses to resolve disputes on issues such as land use and pollution in a collaborative manner by involving all stakeholders therefore finding solutions that protect the environment and promote Sustainable Development⁶⁵. Further, by fostering

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Muigua. K., 'Infusing Environmental, Social, and Governance Tenets into Arbitration and Alternative Dispute Resolution' Op Cit

⁵⁹ Gramatidis.B & Emvalomenos. D., 'Sustainability in Dispute Resolution -Mediation as an ESG Practice.' Available at <https://www.bahagram.com/sustainability-in-dispute-resolution-mediation-as-anesgpractice/> (Accessed on 25/06/2024)

⁶⁰ Ibid

⁶¹ Maia. A., 'The Importance of Mediation in ESG: Promoting Sustainability in Corporations' Available at <https://mediationblog.kluwerarbitration.com/2024/03/08/the-importance-of-mediation-in-esg-promoting-sustainability-in-corporations/> (Accessed on 25/06/2024)

⁶² Ibid

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ Ibid

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collaboration, mediation allows companies to build stronger and long-term relationships with their stakeholders and to promote corporate social responsibility a key agenda under the G tenet of ESG⁶⁶.

ADR processes including arbitration and mediation are therefore ideal in managing ESG disputes. The suitability of ADR techniques in managing ESG disputes provides a platform for enhancing the role of the PAC in ESG disputes⁶⁷. The PCA has been identified as a suitable forum for managing environmental and climate change related disputes⁶⁸. It has been noted that PCA is an important forum in principle for the resolution of inter-state disputes on climate-related matters since it is best placed to develop international law⁶⁹. Further, it has been observed that many states have opted for arbitration in regard to environmental matters both between states and in cases involving investors, such as disputes over power generation and natural resource extraction⁷⁰. As a result, the PCA is an ideal venue for international environmental disputes involving states and investors⁷¹.

The PCA is associated with several advantages that can enhance its role in ESG disputes. For example, it is the oldest institution dedicated to settling inter-state disputes which currently has 122 member states and therefore enjoys a high degree of international recognition and acceptance⁷². The PCA is also open to a broad range of actors such as states, private parties and intergovernmental organisations and is therefore suitable in

⁶⁶ Ibid

⁶⁷ Moreno. M. B., 'From its Origins to Actuality: The Permanent Court of Arbitration' Op Cit

⁶⁸ International Bar Association., 'Achieving Justice and Human Rights in an Era of Climate Disruption: International Bar Association Climate Change Justice and Human Rights Task Force Report' Available at <https://www.ibanet.org/MediaHandler?id=0f8cee12-ee56-4452-bf43-cfcab196cc04> (Accessed on 25/06/2024)

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Ibid

⁷² International Bar Association., 'Achieving Justice and Human Rights in an Era of Climate Disruption: International Bar Association Climate Change Justice and Human Rights Task Force Report' Op Cit

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managing a broad range of ESG disputes involving different entities⁷³. It can also guarantee expertise in ESG disputes⁷⁴. Among other organs, the PCA is comprised of Members of the Court who are arbitrators appointed by contracting parties with known competency in questions of international law⁷⁵. Members of the Court possess expertise in various areas of international law and dispute resolution and can therefore guarantee expertise in managing ESG disputes⁷⁶.

The PCA has jurisdiction over various disputes some of which are ESG related⁷⁷. The jurisdiction of the PCA is based on founding documents like the *Convention for the Pacific Settlement of International Disputes*⁷⁸. It is also derived from bilateral and multilateral treaties giving authority to the PCA to manage ESG related disputes⁷⁹. For example, the *Energy Charter Treaty*⁸⁰ designates the PCA as an appointing authority in energy disputes⁸¹. Parties to energy disputes under the Energy Charter Treaty can therefore choose to have their disputes administered by the PAC. The PAC has also facilitated inter-state dispute resolution involving oceans and the law of the sea under the United Nations Convention on the Law of the Sea on ESG factors such as pollution at sea⁸².

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Permanent Court of Arbitration., 'Members of the Court' Available at <https://pca-cpa.org/en/about/structure/members-of-the-court/> (Accessed on 25/06/2024)

⁷⁶ Ibid

⁷⁷ Marquez. G., 'The Perils of Intra-Corporate Arbitration for ESG Disputes' Available at <https://aria.law.columbia.edu/the-perils-of-intra-corporate-arbitration-for-esg-disputes/> (Accessed on 25/06/2024)

⁷⁸ Convention for the Pacific Settlement of International Disputes., Op Cit

⁷⁹ Marquez. G., 'The Perils of Intra-Corporate Arbitration for ESG Disputes' Op Cit

⁸⁰ Energy Charter Treaty., Available at <https://www.energycharter.org/fileadmin/DocumentsMedia/Legal/ECTC-en.pdf> (Accessed on 25/06/2024)

⁸¹ Ibid, article 27 (3) (d)

⁸² Permanent Court of Arbitration., 'Contribution of the Permanent Court of Arbitration to the Report of the United Nations Secretary-General on Oceans and the Law of the Sea, as at 18 June 2021' Available at https://www.un.org/depts/los/general_assembly/contributions_2021/PCAEng.pdf (Accessed on 25/06/2024)

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The PAC has adopted *arbitration rules*⁸³ which apply in arbitrating disputes involving at least one State, State-controlled entity, or intergovernmental organization. The rules emphasize flexibility and party autonomy and can therefore be embraced in managing ESG disputes⁸⁴. The Rules contain model clauses that parties may consider inserting in treaties, contracts, or other agreements to provide for arbitration of existing or future disputes⁸⁵. The model clauses can be tailored to specific disputes including contractual and treaty based disputes⁸⁶. Therefore, the model clauses can be embraced to manage ESG disputes relating to commercial contracts and investment treaties.

In addition, the PAC has developed *Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or The Environment*⁸⁷. The Optional Rules are based on the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules with changes in order to reflect the particular characteristics of disputes having a natural resources, conservation, or environmental protection component⁸⁸. The Optional Rules envisage appointment of arbitrators from a list of persons considered to have expertise in environmental and natural resources matters⁸⁹. They also require the PAC to maintain a list of persons considered to have expertise in the scientific or technical matters related to the environment and natural resources in order to foster effective management of disputes relating to natural resources and/or the environment⁹⁰. The Optional Rules are

⁸³ Permanent Court of Arbitration, *Arbitration Rules*, 2012., Available at <https://docs.pca-cpa.org/2015/11/PCA-Arbitration-Rules-2012.pdf> (Accessed on 25/06/2024)

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Permanent Court of Arbitration., 'Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or The Environment' Available at <https://docs.pca-cpa.org/2016/01/Optional-Rules-for-Arbitration-of-Disputes-Relating-to-the-Environment-and-or-Natural-Resources.pdf> (Accessed on 25/06/2024)

⁸⁸ Ibid

⁸⁹ Ibid, article 8 (3)

⁹⁰ Ibid, article 27 (5)

therefore vital in enhancing the role of the PAC in ESG disputes especially under the Environmental 'E' pillar of ESG.

The PAC therefore has a key role to play in ESG disputes. Despite, its vital role in ESG disputes, it has been noted that the PAC has been underutilized in managing such disputes including those concerning climate change and human rights. As a result, there have been calls for an increased use of the PCA in ESG disputes especially in environmental dispute resolution⁹¹. Further, a recent *Resolution of the Congress of the Members of the Court*⁹² recognizes the PCA as a modern, multifaceted arbitral institution with a unique role in international dispute settlement, and encourages the Members of the Court to promote the PCA and its services. It is therefore necessary to enhance the role of the PAC in ESG disputes.

4.0 Conclusion

The PAC is a viable forum in managing ESG disputes. Its long history as a dedicated institution to settling inter-state disputes means that it enjoys a high degree of international recognition and acceptance and can therefore be utilized by parties in managing ESG disputes⁹³. It can also offer a platform for managing a broad range of ESG disputes involving multiple entities since it is available to a broad range of actors such as states, private parties and intergovernmental organisations⁹⁴. PAC can also guarantee expertise in ESG disputes since it comprises of Members of the Court with known competencies in international law and dispute resolution⁹⁵. The PAC Arbitration Rules

⁹¹ International Bar Association., 'Achieving Justice and Human Rights in an Era of Climate Disruption: International Bar Association Climate Change Justice and Human Rights Task Force Report' Op Cit

⁹² Permanent Court of Arbitration., 'Resolution of the Congress of the Members of the Court' Available at <https://docs.pca-cpa.org/2024/06/e1a8ddc0-resolution-of-the-congress-of-the-members-of-the-court-eng-original.pdf> (Accessed on 25/06/2024)

⁹³ International Bar Association., 'Achieving Justice and Human Rights in an Era of Climate Disruption: International Bar Association Climate Change Justice and Human Rights Task Force Report' Op Cit

⁹⁴ Ibid

⁹⁵ Permanent Court of Arbitration., 'Members of the Court' Op Cit

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emphasize flexibility and party autonomy and can therefore be embraced in managing ESG disputes⁹⁶. Further, the *Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or The Environment* are also ideal in enhancing the role of the PAC in ESG disputes⁹⁷. It is therefore necessary for states, private parties, and intergovernmental organisations to utilize the PAC in order to foster effective management of ESG disputes. The PAC can also enhance its role in ESG disputes through the appropriate use of emerging technologies; and providing dispute resolution services in the fields of climate change, environmental and natural resources, and business and human rights among other key themes in ESG⁹⁸. Members of the Court can also foster the role of the PAC in ESG by building their capacity in ESG matters. The *Resolution of the Congress of the Members of the Court*⁹⁹ urges Members of the Court to take all appropriate steps to make the role of the Permanent Court of Arbitration better known, both to the Contracting Parties who have appointed them and amongst a wider audience. Members of the Court should therefore heed this call and market the PAC as an ideal forum for managing ESG disputes.

It is imperative to enhance the role of the PAC in ESG disputes in order to ensure access to justice and foster sustainability.

⁹⁶ Permanent Court of Arbitration, *Arbitration Rules*, 2012., Op Cit

⁹⁷ Permanent Court of Arbitration., 'Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or The Environment' Op Cit

⁹⁸ Permanent Court of Arbitration., 'Resolution of the Congress of the Members of the Court' Op Cit

⁹⁹ Ibid

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International Bar Association., 'Report on use of ESG Contractual Obligations and Related Disputes' Available at <https://www.ibanet.org/document?id=report-on-use-of-ESG-contractual-obligations>

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