



**Statement of the Permanent Court of Arbitration  
to the Sixth Committee of the United Nations' General Assembly at its Seventy-Third**

**Session: Report of the International Law Commission**

*Delivered by Evgeniya Gorintcheva, Senior Legal Counsel (Oct 2018 cluster 1)*

anticipate[d] major changes to the coastline by [the year] 2100.”<sup>2</sup>

9 While noting that the relevant coast of Bangladesh is unstable, the tribunal found that

only the “physical reality at the time of the delimitation” needed to be considered.<sup>3</sup> If  
here points for the construction of an equidistance line would be different.

## GENERAL PRINCIPLES OF LAW

13. The PCA also notes that the Commission has included the topic of “general principles of law” in its programme of work. In examining this topic, the Commission may wish to review certain PCA awards rendered in both inter-State and investor-State arbitrations.
14. The Commission has already identified<sup>9</sup> the 1912 *Russian Loans* arbitration<sup>10</sup> and 1902

18. Other principles applied in PCA cases include, among others, unjust enrichment,<sup>18</sup> the

principles specifically relevant to dispute settlement, such as those concerning the

recognizing as compulsory various dispute settlement mechanisms, including arbitration.<sup>26</sup> Over the last two decades, many proceedings under PCA auspices have touched upon environmental issues.

23. Second, the PCA's experience suggests that scientific and technical experts are often needed in environmental disputes and can be integrated into proceedings in different ways.
24. Experts may be appointed by the parties to the dispute or by the arbitrators or conciliators. For example, in the *South China Sea Arbitration* between the Philippines and China, which among other questions concerned allegations of harm to the marine environment, the tribunal appointed an expert hydrographer, three experts on coral reef systems and an expert on navigational safety issues.<sup>27</sup>
25. Technical and scientific experts may also be selected to sit themselves as arbitrators or conciliators. One example is found in the *Indus Waters Kishenganga Arbitration* between Pakistan and India, which concerned the construction of a hydroelectric project on the

Kishenganga/Neelum River and its downstream environmental impact. The *Indus Waters Treaty* of 1960, under which the arbitral tribunal was constituted, provided that at least

administered several disputes under these rules, including disputes relating to the Kyoto Protocol's Clean Development Mechanism and emissions trading schemes.

27. In addition to the importance of experts, the PCA's experience with environmental disputes suggests that their distinctive character may also call for consideration of other features of dispute settlement.
28. Thus, the approach to be taken to evidence may require particular consideration in the context of environmental disputes. An illustration of the possible evidentiary difficulties is provided by the *Allard v. Barbados* investor-State arbitration where the investor

releases during the proceedings and at the end of the case provided for the publication of documents such as pleadings and transcripts. The tribunal also admitted as observers to the hearing eight "interested States parties to the United Nations Convention on the Law

of the Sea."<sup>34</sup> Further, in the *Arctic Sunrise Arbitration* between the Netherlands and the Russian Federation, which concerned the arrest of a Greenpeace vessel following a "Search