

**MEMORANDUM TO PARLIAMENT**

**SUBMITTED BY:  
GLORIA AFUA AKUFFO (MISS)  
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE**

**TITLE:  
REQUEST FOR APPROVAL FOR THE 1899 AND THE 1907  
CONVENTIONS FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL  
DISPUTES IN ORDER TO BECOME A CONTRACTING PARTY TO THE  
PERMANENT COURT OF ARBITRATION, TO BE LAID BEFORE  
PARLIAMENT FOR ACCESSION**

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## MEMORANDUM TO PARLIAMENT

### REQUEST FOR APPROVAL FOR THE 1899 AND THE 1907 CONVENTIONS FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES IN ORDER TO BECOME A CONTRACTING PARTY TO THE PERMANENT COURT OF ARBITRATION, TO BE LAID BEFORE PARLIAMENT FOR ACCESSION

#### **1. ACTION REQUIRED**

Parliament is respectfully requested to consider and approve for accession by Ghana the 1899 and the 1907 Conventions for the Pacific Settlement of International Disputes In Order To Become A Contracting Party to the Permanent Court of Arbitration.

#### **2. BACKGROUND INFORMATION**

The 1907 Convention for the Pacific Settlement of International Disputes constitutes a revision of the 1899 Convention under the same title and is the most tangible result of the first International Peace Conference held at the Hague in 1899 at the initiative of Czar Nicholas II of Russia. The first Hague International Peace Conference is often seen as the beginning of multilateral diplomacy and cooperation. Regarding that conference, the former United Nations Secretary-General Kofi Annan wrote;

*"The Permanent Court of Arbitration was born in 1899, a product of the first Hague Peace Conference. Also at that landmark gathering, the seeds were planted that later germinated into the league of Nations and, ultimately, the United Nations and its judicial organ, the International Court of Justice are not merely neighbours in the Hague Peace Palace; they are complementary institutions offering the international community a comprehensive range of options for the peaceful resolution of disputes.*

*Settling international disputes by peaceful means, in conformity with the principles of justice and international law, is one of the central purposes of the United Nations Charter. Arbitration is among the methods of peaceful settlement cited in Article 33 of the Charter, and the Permanent Court has a long and distinguished history in this regard*

*..... I encourage States, international organizations and private parties to make greater use of the Court's services, which also include fact-finding and conciliation: such recourse would help ease the workload of the International Court of Justice and fill gaps concerning arbitrations involving private parties and international organizations. I also urge States which have not ratified the Hague Conventions to do so "*

The Permanent Court of Arbitration is an intergovernmental organisation dedicated to serving the international community in the field of dispute resolution. Established by the 1899 Convention for the Pacific Settlement of International Disputes to facilitate arbitration and other forms of dispute resolution between States, the Permanent Court of Arbitration has developed into a modern, multi-faceted arbitral institution perfectly situated to meet the evolving dispute resolution needs of the international community.

Dispute resolution administered by the Permanent Court of Arbitration includes arbitration, mediation, conciliation and fact-finding commissions of inquiry. The Permanent Court of Arbitration has one hundred and twenty-one Contracting Parties which have acceded to one or both of its founding Conventions namely the 1899 and the 1907 Conventions for the Pacific Settlement of International Disputes.

### **3. CONTENT OF THE CONVENTIONS**

The main objective of the 1899 and the 1907 Conventions for the Pacific Settlement of International Disputes is to maintain international peace by facilitating recourse to international arbitration as the most effective and equitable means of settling differences between States which has not been possible to settle by diplomacy.

Articles 20 and 41 of the 1899 Convention and 1907 Conventions respectively recognise the importance of establishing and maintaining a Permanent Court of Arbitration which is

accessible at all times to the international community for the pacific settlement of international disputes.

#### **4. BENEFITS**

Although Ghana has been involved in some proceedings of the Permanent Court of Arbitration and could potentially be involved in such proceedings in future, Ghana is yet to gain from the benefits that come with being a Contracting Party to the Permanent Court of Arbitration. Acceding to the 1899 and the 1907 Conventions for the Pacific Settlement of International Disputes and becoming a Contracting Party to the Permanent Court of Arbitration will ensure that Ghana enjoys the full benefits of becoming a member of this prestigious organisation.

##### **(a) International Image**

Accession to the Conventions will signal commitment by the Government to the goals of fostering investment and promoting peaceful dispute resolution mechanisms such as arbitration thereby strengthening the international legal order as well as raising the international image of the country. Currently, one hundred and twenty-one Contracting Parties including Member States of the Economic Community of West African States (ECOWAS) such as Benin, Burkina Faso, Nigeria and Togo have manifested their commitment to the peaceful settlement of disputes through arbitration or other peaceful means.

The Permanent Court of Arbitration also offers its Contracting Parties the opportunity to nominate four nationals to serve as "Members of the Court". The Members of the Court form a standing list of potential arbitrators from which parties may choose arbitrators to sit on cases. Acceding to the Conventions, presents Ghana with the opportunity to nominate Ghanaians on the panel list to sit on Ghanaian arbitrations and mediations. Members of the Court are held in high esteem in international circles and may have the opportunity to serve as international arbitrators, thereby developing their professional expertise and raising the prestige of the Contracting Party.

## **(b) Capacity Building and Training**

The Permanent Court of Arbitration also offers capacity building and training on the peaceful settlement of disputes to Government officials, practitioners, arbitrators and other professionals of its Contracting Parties. A Contracting Party to the Permanent Court of Arbitration may schedule an annual visit or more frequent visits of experts of the Permanent Court of Arbitration to their country or send delegations to the Headquarters of the Permanent Court of Arbitration at the Peace Palace in the Hague.

Training and capacity building is tailored to the specific needs of the Contracting Parties and may cover subject matters including

- (i) state-state arbitration; investor-state arbitration and contract-based commercial arbitration;
- (ii) alternative forms of dispute resolution such as mediation, conciliation and inquiry;
- (iii) technical advice on the drafting of laws governing the conduct of arbitration in the Contracting Party;
- (iv) provision for dispute resolution clauses in treaties and contracts; and
- (v) any other matter related to peaceful dispute resolution.

## **(c) Support for the Establishment and Organisation of Arbitral Institutions**

The Permanent Court of Arbitration offers its Contracting Parties support in the establishment and organisation of local arbitral institutions. As a Contracting Party, Ghana may approach the Permanent Court of Arbitration for technical advice and support in setting up new local or regional arbitral institutions or in the organisation of existing ones. The latter is generally undertaken through a cooperation agreement with the local institution whereby the Permanent Court of Arbitration and the local institution agree to

- (i) mutual support of dispute resolution proceedings including access to the institutions' respective hearing facilities;
- (ii) cooperation in the organisation of conferences, lectures and

- seminars on arbitration and other means of dispute resolution;  
and
- (iii) exchange information and expertise on developments and innovation in institutional practices.

#### **(d) Financial Assistance**

If Ghana becomes a Contracting Party, it would be eligible to draw upon the Permanent Court of Arbitration Financial Assistance Fund. The Financial Assistance Fund was established in 1994 to provide assistance to developing countries in meeting the costs of international arbitration or other means of peaceful dispute settlement administered by the Permanent Court of Arbitration. Such costs include the fees and expenses of members of an arbitral or other body entrusted with settling international disputes. To date, ten Contracting Parties have drawn upon the Financial Assistance Fund for Permanent Court of Arbitration-administered arbitrations, including four African Union members. The Government of Sudan benefited from a EUR 750,000 grant from the Financial Assistance Fund towards its international arbitral costs in the case of Government of Sudan/ the Sudan People's Liberation Movement/Army (Abyei Arbitration) (PCA Case No.2008-07).

#### **(e) Educational Assistance**

The Permanent Court of Arbitration offers educational assistance to law graduates from its Contracting Parties. Law graduates from the Contracting Parties are eligible to draw upon the Educational Assistance Fund for financial assistance with respect to legal training. The Educational Assistance Fund was established by the Permanent Court of Arbitration Administrative Council in 2010 to provide financial support to law graduates from developing countries which are Contracting Parties. These law graduates are given the opportunity to work at the Permanent Court of Arbitration and receive on the job training for one year.

#### **(f) Employment Opportunities at the Permanent Court of Arbitration**

The International Bureau of the Permanent Court of Arbitration which supports arbitral and other tribunals in the administration of international disputes only employs nationals of Contracting Parties. To date, the Permanent Court of Arbitration has employed on a short-

term or long-term basis, nationals from the following Permanent Court of Arbitration African Union Member States: Egypt, Ethiopia, Kenya, Mauritius, Nigeria, Senegal and South Africa. Such employment opportunities would be open to Ghana should it become a Contracting Party.

#### **(g) Arbitral Forum in the Settlement of International Disputes**

Accession to the Conventions will provide Ghana with the benefit of concluding a Host Country Agreement with the Permanent Court of Arbitration. A Host Country Agreement offers parties to a dispute the full advantages of a Permanent Court of Arbitration-administered proceedings in the territory of the host country under similar conditions as those provided in the Netherlands. Should Ghana become a Contracting Party, Ghana may enter into a Host Country Agreement with the Permanent Court of Arbitration in order to serve as an arbitral forum in respect of the resolution of disputes of other African countries which are Contracting Parties to the Permanent Court of Arbitration. Other States in the region will benefit from their proximity to Ghana as an arbitral forum which will undoubtedly help attract arbitrations to the country and thereby raise the international profile of the country as an arbitral forum.

#### **(h) Joining the Administrative Council of the Permanent Court of Arbitration**

If Ghana becomes a Permanent Court of Arbitration Contracting Party, Ghana's Ambassador accredited to the Netherlands will automatically form part of the Administrative Council of the Permanent Court of Arbitration. This body, in consultation with the Secretary-General, oversees and directs the policy of the Permanent Court of Arbitration. The Council also provides general guidance on the work of the Permanent Court of Arbitration and supervises the administration, budget and expenditure of the Permanent Court of Arbitration.

### **5. FINANCIAL IMPACT CONSIDERED**

The expenses of the Permanent Court of Arbitration are borne by the State Parties to the Convention in the proportions fixed for the Universal Postal Union. The price for one Universal Postal Union unit in 2014 was £1,072.00 according the Universal Postal Union system. If Ghana had then acceded to the Convention, Ghana's contribution would have

## 6. CONCLUSION

I therefore invite Honourable Members of Parliament to consider and approve for accession by Ghana the 1899 and 1907 Conventions for the Pacific Settlement of International Disputes In Order To Become A Contracting Party to the Permanent Court of Arbitration.



**GLORIA AFUA AKUFFO (MISS)**

*Attorney-General and Minister for Justice*

Date: 19/03/18