

**PRESS RELEASE****DISPUTE CONCERNING THE DETENTION OF UKRAINIAN NAVAL VESSELS AND SERVICEMEN
(UKRAINE V. THE RUSSIAN FEDERATION)**

THE HAGUE, 12 NOVEMBER 2020

Arbitral Tribunal to Hear Preliminary Objections Raised by Russian Federation in Preliminary Phase

In its Procedural Order No. 2, issued on 27 October 2020, the Arbitral Tribunal constituted under Annex VII to the United Nations Convention on the Law of the Sea in the arbitration instituted by Ukraine against the Russian Federation has decided to hear the Russian Federation's Preliminary Objections to the Arbitral Tribunal's jurisdiction in a preliminary phase of the proceedings.

On 22 August 2020, the Russian Federation submitted Preliminary Objections and requested that the Arbitral Tribunal hear its objections to the Arbitral Tribunal's jurisdiction in a preliminary phase of the proceedings.

In its Preliminary Objections, the Russian Federation contended that the Arbitral Tribunal does not have jurisdiction:

- (i) because Ukraine's claims relate to a "dispute concerning military activities" and are therefore excluded from the Tribunal's jurisdiction by the operation of declarations made by both Ukraine and the Russian Federation to exclude such disputes pursuant to Article 298(1)(b) of the United Nations Convention on the Law of the Sea (the "Convention") (the "Article 298(1)(b) Objection");
- (ii) because Article 32 of the Convention does not provide for an applicable immunity of warships and other government vessels operated for non-commercial purposes in the territorial sea (the "Article 32 Objection");
- (iii) because the Arbitral Tribunal lacks jurisdiction over the "main dispute" between the Parties, it also lacks jurisdiction on Ukraine's claims based on the alleged non-compliance of the Russian Federation with the Order of the International Tribunal for the Law of the Sea of 25 May 2019 for the Prescription of Provisional Measures (the "Article 290 and 296 Objection");
- (iv) because Article 279 of the Convention "contains no reference to the aggravation of disputes" and therefore does not provide a basis for the Arbitral Tribunal's jurisdiction to adjudicate the Russian Federation's alleged aggravation of the present dispute (the "Article 279 Objection");
- (v) because Ukraine has not complied with the requirement set forth in Article 283 of the Convention that parties to a dispute under the Convention must "proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means" (the "Article 283 Objection");

In Procedural Order No. 2, the Arbitral Tribunal recalled that Article 11, paragraph 3, of the Rules of Procedure adopted in this arbitration provides that

[t]he Arbitral Tribunal shall rule on any Preliminary Objection in a preliminary phase of the proceedings, unless the Arbitral Tribunal determines, after ascertaining the views of the Parties, that such Preliminary Objection does not possess an exclusively preliminary character and should be ruled upon in conjunction with the merits.

On 7 September 2020, in accordance with paragraph 5(a) of Procedural Order No. 1, Ukraine submitted its Observations on the Question of Bifurcation. In its Observations, Ukraine submitted that the Russian Federation's Preliminary Objections "do not possess an exclusively preliminary character". Ukraine therefore requested that Russia's Preliminary Objections be joined to the merits instead of being addressed in a preliminary phase.

On 21 September 2020, in accordance with paragraph 5(c) of Procedural Order No. 1, the Russian Federation submitted its Response to the Observations of Ukraine on the Question of Bifurcation.

On 28 September 2020, in accordance with paragraph 5(d) of Procedural Order No. 1, Ukraine submitted its Reply to the Response of the Russian Federation on the Question of Bifurcation.

In Procedural Order No. 2, the Arbitral Tribunal concluded that it

considers that the Preliminary Objections of the Russian Federation appear at this stage to be of a character that justifies having them examined in a preliminary phase, and in accordance with Article 11, paragraph 3, of the Rules of Procedure, decides that the Preliminary Objections of the Russian Federation shall be addressed in a preliminary phase of these proceedings.

The Arbitral Tribunal further noted that

[i]f the Arbitral Tribunal, in delivering its award in the preliminary phase of the proceedings in accordance with Article 11, paragraph 7, of the Rules of Procedure, declares that a Preliminary Objection does not possess an exclusively preliminary character, then, in accordance with Article 11, paragraph 3, of the Rules of Procedure, that Objection shall be ruled upon in conjunction with the merits.

In accordance with Article 11, paragraph 4, of the Rules of Procedure, the proceedings on the merits have been suspended. In accordance with paragraph 5(f) of Procedural Order No. 1, the Arbitral Tribunal has held that

Ukraine shall file any observations on the Preliminary Objections of the Russian Federation within three months of the date of this Order. Following receipt of these observations, the Arbitral Tribunal will decide whether any further written submissions are needed and, after consultation with the Parties, the time limits for such submissions.

Judge Gudmundur Eiriksson appended a Dissenting Opinion to the Order of the Arbitral Tribunal.

Background to the Dispute

The arbitral proceedings were instituted on 1 April 2019 when Ukraine served on the Russian Federation a Notification and Statement of Claim¹ under Annex VII to the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The Notification and Statement of Claim refers to a dispute concerning the detention of Ukrainian naval vessels and servicemen.

The five-member Tribunal is chaired by Professor Donald McRae as President (a national of Canada and New Zealand). The other members are Judge Gudmundur Eiriksson (Iceland), Judge Rüdiger Wolfrum (Germany), Judge Vladimir Vladimirovich Golitsyn (Russian Federation), and Sir Christopher Greenwood (United Kingdom).

Further information about the proceedings is available on the PCA website at <https://pca-cpa.org/en/cases/229/>. In accordance with the Rules of Procedure, the PCA, after consultation with the Parties, will from time to time issue press releases, concerning the status of the

¹ The full title of the document is "Notification under Article 287 and Annex VII, Article 1 of the United Nations Convention on the Law of the Sea and Statement of the Claim and Grounds on which it is Based".

proceedings. Moreover, procedural orders of the Arbitral Tribunal will be made publicly available on the website of the Permanent Court of Arbitration seven days after they have been notified to the Parties. Further, any award of the Arbitral Tribunal will be made public unless both Parties agree otherwise.

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Background on the Permanent Court of Arbitration

The Permanent Court of Arbitration is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 122 Contracting Parties. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties. The PCA's International Bureau is currently administering 7 interstate arbitrations, 101 investor-State arbitrations, and 52 cases arising under contracts involving a State or other public entity, and 2 other disputes. More information about the PCA can be found at www.pca-cpa.org.

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