

**PRESS RELEASE****DISPUTE CONCERNING COASTAL STATE RIGHTS IN THE BLACK SEA, SEA OF AZOV, AND KERCH STRAIT (UKRAINE V. THE RUSSIAN FEDERATION)**

THE HAGUE, 31 AUGUST 2018

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

In its Procedural Order No. 3, issued unanimously on 20 August 2018, the Tribunal constituted under Annex VII to the United Nations Convention on the Law of the Sea (“UNCLOS”) in the arbitration instituted by Ukraine against the Russian Federation has decided to hear the Russian Federation’s Preliminary Objections to the Tribunal’s jurisdiction in a preliminary phase of the proceedings.

The arbitration concerns Ukraine’s claims, as described in its Memorial filed on 19 February 2018, that the Russian Federation has violated (i) “Ukraine’s rights to hydrocarbon resources in the Black Sea and Sea of Azov,” (ii) “Ukraine’s rights to living resources in the Black Sea, Sea of Azov, and Kerch Strait,” (iii) “Ukraine’s rights by embarking on a campaign of illegal construction in the Kerch Strait that threatens navigation and the marine environment,” (iv) “its duty to cooperate with Ukraine to address pollution at sea,” and (v) “Ukraine’s UNCLOS rights and [its] own duties in relation to underwater cultural heritage.”

The Russian Federation filed Preliminary Objections on 21 May 2018, requesting that the Tribunal hear its objections to the Tribunal’s jurisdiction in a preliminary phase of the proceedings, and adjudge and declare that the Tribunal is without jurisdiction in respect of this dispute. Procedural Order No. 3 summarises the Russian Federation’s Preliminary Objections for the purposes of the Order.

As set out in Procedural Order No. 3, the first objection of the Russian Federation is that:

the Arbitral Tribunal lacks jurisdiction because the Parties’ dispute in reality concerns Ukraine’s “claim to sovereignty over Crimea” and is therefore not a “dispute concerning the interpretation or application of the Convention” as required by Article 288, paragraph 1, of the Convention.

Without prejudice to the first objection, the Russian Federation also contends that the Arbitral Tribunal does not have jurisdiction:

(i) insofar as Ukraine’s claims pertain to the Sea of Azov and the Kerch Strait, because they constitute internal waters, UNCLOS does not regulate internal waters, and the Kerch Strait is not a strait regulated by UNCLOS,

(ii) because Ukraine’s claims relate to categories listed in Article 298(1)(a)(i) and (b) of the Convention, which are excluded from the Arbitral Tribunal’s jurisdiction as a result of the Parties’ declarations made under Article 298(1),

(iii) because the dispute concerns living resources within the exclusive economic zone, excluded from the Arbitral Tribunal’s jurisdiction by the “automatic limitation” in Article 297(3)(a) of the Convention,

(iv) because both Parties made declarations choosing “an Annex VIII tribunal for the consideration of matters relating to fisheries, the protection and preservation of the marine environment, marine scientific research, and navigation”, thus excluding the jurisdiction of the present Tribunal over Ukraine’s claims relating to fisheries, protection and preservation of the marine environment, and navigation, and

(v) because the provisions on dispute settlement contained in the State Border Treaty and the Azov/Kerch Cooperation Treaty, by virtue of Article 281 of the Convention, exclude the jurisdiction of the Tribunal over Ukraine’s claims relating to the Sea of Azov, the Kerch Strait and other adjacent sea areas[.]

In Procedural Order No. 3, the Tribunal recalled that Article 10, paragraph 4, of the Rules of Procedure adopted in this arbitration on 18 May 2017 (“Rules of Procedure”)

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 Objection does not possess an exclusively preliminary character and should be ruled upon in conjunction with the merits.”

Ukraine, at the Tribunal’s invitation, had provided comments on the Russian Federation’s request to deal with the Preliminary Objections in a preliminary phase on 18 June 2018. Ukraine stated, among other things, that “Russia’s principal jurisdictional objection rests on the remarkable premise that it has a legal claim to sovereignty over the Crimean Peninsula” and that the Preliminary Objections are “deeply intertwined with the merits of this case and lack an exclusively preliminary character.” The Russian Federation had replied to Ukraine’s comments on 4 July 2018. In that reply, the Russian Federation stated, among other things, that its Preliminary Objections raise only a legal question, which “requires no more than characterization of the dispute, which is an entirely usual exercise for an international tribunal at a jurisdictional phase.”

In Procedural Order No. 3, the Tribunal concluded that it

considers that the Preliminary Objections of the Russian Federation appear at this stage to be of a character that requires them to be examined in a preliminary phase, and accordingly decides that the Preliminary Objections of the Russian Federation shall be addressed in a preliminary phase of these proceedings.

The Tribunal further noted that

[i]f the Arbitral Tribunal determines after the closure of the preliminary phase of the proceedings that there are Preliminary Objections that do not possess an exclusively preliminary character, then, in accordance with Article 10, paragraph 8, of the Rules of Procedure, such matters shall be reserved for consideration and decision in the context of the proceedings on the merits.

In accordance with Article 10, paragraph 5, of the Rules of Procedure, the proceedings on the merits have been suspended. It now falls to the President of the Arbitral Tribunal to fix time-limits for further written pleadings on jurisdiction, after ascertaining the views of the Parties.

Background to the Dispute

The arbitral proceedings were instituted on 16 September 2016 when Ukraine served on the Russian Federation a Notification and Statement of Claim¹ under Annex VII to the 1982 United Nations

¹ The full title of the document is “Notification under Article 287 and Annex VII, Article 1 of UNCLOS and Statement of the Claim and Grounds on which it is Based”.

Convention on the Law of the Sea (“UNCLOS”). The Notification and Statement of Claim refers to a “dispute concerning coastal state rights in the Black Sea, Sea of Azov, and Kerch Strait”.

The five-member Tribunal is chaired by Judge Jin-Hyun Paik as President (a national of the Republic of Korea). The other members are Judge Boualem Bouguetaia (Algeria), Judge Alonso Gómez-Robledo (Mexico), Judge Vladimir Vladimirovich Golitsyn (Russian Federation), and Professor Vaughan Lowe QC (United Kingdom). Professor Lowe was appointed by Ukraine. Judge Golitsyn was appointed by the Russian Federation. Judges Paik, Bouguetaia, and Gómez-Robledo were appointed in accordance with the procedure set out in UNCLOS Annex VII, Article 3, paragraph 2. The Permanent Court of Arbitration (“PCA”) acts as registry for the proceedings.

Further information about the proceedings is available on the PCA Case Repository (<http://www.pcacases.com>). 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 proceedings. Moreover, procedural orders and decisions of the Arbitral Tribunal will be made publicly available on the website of PCA seven days after they have been notified to the Parties. Further, any award of the Tribunal will be made public unless both Parties object.

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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 121 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 3 interstate disputes, 93 investor-State arbitrations, and 54 cases arising under contracts involving a State or other public entity. More information about the PCA can be found at www.pca-cpa.org.

The PCA has acted as Registry in numerous arbitrations and conciliations between States, including in 14 proceedings under UNCLOS.

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