

PCA Case No. 2019-28

IN THE MATTER OF AN ARBITRATION

before

AN ARBITRAL TRIBUNAL CONSTITUTED UNDER ANNEX VII TO THE  
1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

B e t w e e n :

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UKRAINE

Claimant

and

The Russian Federation

Respondent

in respect of a

DISPUTE CONCERNING THE DETENTION OF  
UKRAINIAN NAVAL VESSELS AND SERVICEMEN

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THE ARBITRAL TRIBUNAL

PROFESSOR DONALD MCRAE	- PRESIDENT
JUDGE GUDMUNDUR EIRIKSSON	- CO-ARBITRATOR
JUDGE RÜDIGER WOLFRUM	- CO-ARBITRATOR
JUDGE VLADIMIR GOLITSYN	- CO-ARBITRATOR
SIR CHRISTOPHER GREENWOOD	- CO-ARBITRATOR

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Tuesday, 12 October 2021  
The Hague, The Netherlands

AS CORRECTED BY THE PARTIES

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1 Tuesday, 12 October 2021

2 Ukraine v the Russian Federation

3 PRESIDENT: Good morning. The  
4 Arbitral Tribunal will continue today its hearing  
5 in PCA Case No. 2019-28, the dispute concerning 01:01:52  
6 the detention of Ukrainian naval vessels and  
7 servicemen. Today Ukraine is due to present its  
8 first round of oral submissions.

9 Again, as was the case yesterday,  
10 this portion of the hearing is being webcast live 01:02:14  
11 on the internet. After the statement made by the  
12 agent for Ukraine, the webcast will end. No other  
13 parts of today's proceedings will be webcast.

14 I give the floor to Ms Zolotaryova  
15 to make her statement. 01:02:33

16 OPENING STATEMENT ON BEHALF OF UKRAINE

17 MS ZOLOTARYOVA: Mr President,  
18 members of the Arbitral Tribunal, I am honoured to  
19 appear before you as the Agent for Ukraine.

20 Ukraine believes in international 01:02:54  
21 law. When the rules of international law are  
22 broken, we seek justice and accountability by  
23 peaceful means. That is why Ukraine came to this  
24 Tribunal. The Russian Federation has violated a  
25 fundamental principle of the Law of the Sea, the 01:03:10



1 immunity of warships. The United Nations  
2 Convention on the Law of the Sea guarantees this  
3 immunity. It means that Ukrainian naval vessels,  
4 the Nikopol, the Berdyansk and the Yani Kapu, are  
5 an expression of our sovereignty and they must be 01:03:27  
6 respected as such. But Russia does not respect  
7 international law. It does not respect Ukraine's  
8 sovereignty. And in this case, it did not respect  
9 the immunity of Ukraine's warships, a  
10 well-established principle of international law. 01:03:42

11 We are here to defend not just  
12 Ukraine but the rule-based international order on  
13 the seas.

14 Ukraine also has another reason for  
15 this case. We pursue this case for 24 of our 01:03:56  
16 brave servicemen who suffered because of Russia's  
17 disrespect for international law. For 9.5 months  
18 Russia took away their liberty and kept them from  
19 their families. Russia treated them as criminals.  
20 Russia detained them in poor conditions in the 01:04:15  
21 notorious Lefortovo Prison, and Russia forced them  
22 to sit in cages in the courts. My entire country,  
23 and the whole world, watched this with horror.  
24 This case is about these brave Ukrainian men.

25 As you listen to legal arguments 01:04:34

1 this week, I ask the Tribunal to keep in mind the  
2 names of my countrymen. They are the ones who  
3 Russia illegally arrested, detained and prosecuted  
4 and who deserve justice, namely Denys Hrytsenko,  
5 Roman Mokryak, Bohdan Nebylytsia, Oleh Melnychuk, 01:04:58  
6 Volodymyr Lisovyy, Serhiy Popov, Andriy Drach,  
7 Vasyl Soroka, Andriy Artemenko, Viktor  
8 Bezpalchenko, Yuriy Bezyazychnyy, Andriy Oprysko,  
9 Volodymyr Tereschenko, Mykhailo Vlasjuk, Volodymyr  
10 Varymez, Vyacheslav Zinchenko, Andriy Eider, 01:05:25  
11 Bohdan Holovash, Yevheniy Semydatskyy, Serhiy  
12 Tsybizov, Yuriy Budzylo, Andriy Shevchenko,  
13 Vladyslav Kostyshyn, Serhiy Chyliba.

14 Russia does not want this Tribunal  
15 to hear Ukraine's case. It seeks to avoid dispute 01:05:46  
16 settlement under UNCLOS, even though Russia  
17 consented to it. Russia believes it can violate  
18 international law without consequences. Russia is  
19 mistaken. Many of its arguments have already been  
20 rejected by the International Tribunal for the Law 01:06:02  
21 of the Sea. The ITLOS issued an order requiring  
22 Russia to immediately release Ukrainian warships  
23 and servicemen. It was a commonsense order,  
24 adopted by 19 votes to one. The ITLOS found  
25 prima facie jurisdiction to issue that order. 01:06:20

1 This week all Ukraine asks from the Tribunal is to  
2 follow a similar path and recognise its  
3 jurisdiction over this dispute. We believe the  
4 record before you establishes your jurisdiction  
5 beyond doubt.

01:06:35

6 Ukraine will demonstrate that  
7 Russia's attempt to escape accountability must be  
8 rejected. These attempts are not based on sound  
9 principles of international law. In fact, they  
10 are inconsistent. When it suits Russia to call  
11 something a law enforcement activity, it does so,  
12 but when they believe it helps them they say  
13 instead it is a military activity. When Russia  
14 first arrested our vessels, it involved UNCLOS as  
15 justification. But now Russia insists that UNCLOS  
16 does not govern their actions. The only point on  
17 which Russia is consistent, is that it should not  
18 be accountable for its actions.

01:06:48

01:07:05

19 Russia also has trouble with facts.  
20 Throughout yesterday's presentations you were told  
21 that there is no real dispute about the facts. So  
22 I was very surprised to hear a number of  
23 statements that are not based on reality. I know  
24 the record of this case and the testimony of our  
25 servicemen; they tell a very different story. You

01:07:18

01:07:32

1 were also presented yesterday with the false  
2 picture of what the dispute is about and an  
3 incorrect approach to UNCLOS. Today we will show  
4 you what the dispute actually concerns.

5 I should pause here to acknowledge 01:07:48  
6 what the whole world knows. The disputes between  
7 Ukraine and Russia are complex and multi-faceted;  
8 many of them serious in nature. Ukraine is  
9 witnessing blatant violations of international law  
10 by Russia on a daily basis but, even for us, 01:08:05  
11 Russia's arrest of our warships was a shocking  
12 event. While our disputes are many, we are before  
13 you to solve a narrow issue under UNCLOS regarding  
14 Russia's affront to Ukraine's sovereignty when it  
15 arrested and detained our warships and men. 01:08:23

16 The Tribunal has jurisdiction to  
17 hear this dispute. Today we will show you why  
18 every one of Russia's objections should be  
19 rejected. First, you will hear from Ms Marney  
20 Cheek. She will demonstrate that this dispute 01:08:41  
21 does not concern military activities and,  
22 therefore, this case is not subject to the  
23 exception from the jurisdiction under  
24 Article 298(1)(b) of the Convention. Ukraine  
25 claims that Russia has violated the immunity of 01:08:55

1 its naval vessels. When Russia arrested those  
2 vessels and their crew in order to prosecute them  
3 for supposedly violating Russian law, that  
4 immunity was violated. Russia continued to assert  
5 criminal jurisdiction by prosecuting Ukraine's 01:09:11  
6 servicemen. It detained our warships on the basis  
7 that they were evidence in a criminal case. Such  
8 actions are gross violations of the Law of the  
9 Sea. Ukraine brings a claim that concerns an  
10 unlawful attempt to invoke criminal jurisdictions 01:09:26  
11 against vessels that are immune from such  
12 jurisdiction. This is not a dispute that falls  
13 within the Convention's military activities  
14 exception.

15                   Following Ms Cheek, Professor Alfred 01:09:41  
16 Soons will demonstrate that Ukraine's claims of  
17 immunity violation fall within the UNCLOS.  
18 Specifically, he will explain that since the  
19 immunity violations committed by Russia occurred  
20 in the Exclusive Economic Zone in the Black Sea 01:09:54  
21 they are governed by Articles 95 and 96 of the  
22 Convention. Russia wishes to dispute the precise  
23 location of its unlawful arrest of Ukrainian  
24 vessels and servicemen, but this is improper at  
25 this stage of proceeding. The proper legal 01:10:15

1 analysis is to accept the facts as brought by  
2 Ukraine in assessing Russia's objection. In  
3 addition to its improper factual argument, Russia  
4 makes an untenable legal argument. Russia claims  
5 that it was engaged in hot pursuit of warships and 01:10:26  
6 that Russia has the right to chase our ships from  
7 the territorial sea into the Exclusive Economic  
8 Zone to arrest them. That is not what UNCLOS says  
9 about warship immunity. Russia is wrong at every  
10 step. The idea of hot pursuit against the warship 01:10:42  
11 makes just no sense. Russia's argument is also  
12 wrong because it would deny the immunity to  
13 warships in the territorial sea. Although this  
14 question is not properly before the Tribunal at  
15 this stage, Professor Soons will show that 01:10:58  
16 Article 32 of the Convention provides for such  
17 immunity in the territorial sea.

18                   After Professor Soons speaks,  
19 Professor Jean-Marc Thouvenin will demonstrate  
20 that the Tribunal also has jurisdiction over the 01:11:14  
21 dispute between the parties concerning Russia's  
22 violation of the provisional measures order and  
23 its aggravation of the dispute.

24                   First, he will address Russia's  
25 failure to promptly comply with the provisional 01:11:26

1 measures under the order issued by the  
2 International Tribunal of the Law of the Sea. The  
3 order of the ITLOS in May 2019 was binding and  
4 clear. Russia was required to immediately release  
5 Ukraine's naval vessels and servicemen. But 01:11:41  
6 Russia continued detaining them for months after  
7 that order. This was a serious breach of  
8 Article 290 of the Convention which imposes a  
9 legal obligation to comply promptly with the  
10 provisional measures order. 01:11:58

11 The Tribunal has jurisdiction over  
12 these serious violations of UNCLOS.

13 Professor Thouvenin will also  
14 explain how Russia has violated Article 279 of the  
15 Convention by aggravating the dispute between the 01:12:12  
16 parties.

17 Finally, Mr David Zions will  
18 demonstrate that Ukraine satisfied its obligation  
19 to proceed to an exchange of views about the  
20 resolution of this dispute. As required by 01:12:25  
21 Article 283 of the Convention, Ukraine asked the  
22 Russian Federation to exchange views on resolving  
23 this dispute, but Russia delayed and would not  
24 proceed quickly to an exchange of views.

25 Meanwhile, our servicemen remained in detention 01:12:41

1 and faced this new violation of their immunity in  
2 Russia's courts.

3 Ukraine was fully justified in  
4 commencing arbitration and bringing its  
5 application for provisional measures. 01:12:54

6 Mr President, members of the  
7 Tribunal, you will see that Ukraine's grounds for  
8 invoking the Tribunal's jurisdiction are  
9 well-supported by the facts and by international  
10 law. Russia's objections are not. Russia 01:13:08  
11 committed serious violations of international law  
12 by violating the immunity of Ukraine's warships.  
13 The Tribunal has jurisdiction under UNCLOS to  
14 provide a remedy for this serious violation and to  
15 hold Russia to account. 01:13:26

16 The Berdyansk, Nikopol and Yani Kapu  
17 and the 24 servicemen on board were illegally  
18 arrested almost three years ago. Ukraine asks the  
19 Tribunal to promptly move to the merits of the  
20 case. 01:13:40

21 On behalf of my country, I thank you  
22 for your attention to this important case.  
23 We seek your relief so that Ukraine can finally  
24 obtain justice, accountability and compensation  
25 for our brave servicemen and defend the 01:13:54



1 well-recognised principle of absolute immunity of  
2 naval vessels.

3                   Mr President, thank you. I now  
4 request that you invite Ms Marney Cheek to the  
5 podium.

01:14:08

6                   PRESIDENT: I thank you,  
7 Ms Zolotaryova. The live transmission of today's  
8 hearing now concludes. I don't know if there is a  
9 photographer present, but we'll ask the  
10 photographer to leave. Thank you.

01:14:26