

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

THE HAGUE, 11 JULY 2022

Publication of Award on the Preliminary Objections of the Russian Federation

In an arbitration under Annex VII to the United Nations Convention on the Law of the Sea (“UNCLOS”) concerning the dispute concerning the detention of Ukrainian naval vessels and servicemen, an [award on the preliminary objections of the Russian Federation](#) has been published on the website of the Permanent Court of Arbitration (“PCA”). The PCA acts as registry for the proceedings.

The Arbitral Tribunal had issued the award on 27 June 2022. Pursuant to the [Rules of Procedure](#), prior to the publication of the award, the Parties were provided with a reasonable opportunity to consider whether any part of the award should be designated as containing “confidential information”.

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 UNCLOS, in respect of claims in connection with the events of 24-25 November 2018 summarized as follows in the introduction to the Arbitral Tribunal’s award:

On 24 November 2018, three Ukrainian naval vessels (the *Berdyansk*, the *Nikopol* and the *Yani Kapu*) set sail on a mission with the objective of navigating from the Ukrainian port of Odesa, through the Kerch Strait, to Ukrainian ports in the Sea of Azov. They were confronted by Russian vessels, which claimed that the Russian Territorial Sea on the Black Sea side of the approach to the Kerch Strait was temporarily closed and that by navigating towards the Kerch Strait they would be unlawfully crossing the Russian State border. After the Ukrainian vessels abandoned their attempt to transit the Kerch Strait and began to sail away, they were ordered to stop by vessels of the Russian Federation. When the Ukrainian vessels failed to do so, the Russian Federation intercepted and arrested the Ukrainian vessels and the servicemen on board. That same day, the Investigations Department of the FSB² Directorate for the Republic of Crimea and the City of Sevastopol opened a criminal case and commenced criminal proceedings against the arrested servicemen, and detained the vessels as physical evidence in these criminal prosecutions, on the basis of their having unlawfully crossed the Russian State border.³

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”.

² Federal Security Service of the Russian Federation.

³ Award on the Preliminary Objections of the Russian Federation, para. 2.

The arbitration concerns Ukraine’s claims, as described in its Memorial filed on 22 May 2020, that the Russian Federation has violated the immunity of the three Ukrainian naval vessels in breach of UNCLOS by:

- (i) “ordering the *Berdyansk*, the *Nikopol*, and the *Yani Kapu* to stop and attempting to prevent them from exiting the territorial sea”;
- (ii) “boarding, arresting, and detaining the *Berdyansk*, the *Nikopol*, and the *Yani Kapu*, as well as the 24 Ukrainian servicemen on board, on the evening of 25 November 2018”;
- (iii) “continuing to detain them until 18 November 2019, and repeatedly examining the vessels, removing items from the vessels, and otherwise damaging the *Berdyansk*, the *Nikopol*, and the *Yani Kapu*”; and
- (iv) “continuing to detain until 7 September 2019 the 24 Ukrainian servicemen who were on board on the vessels, and commencing and maintaining criminal prosecutions of those servicemen based on their alleged actions on board the vessels”.⁴

Additionally, Ukraine claims that the Russian Federation has violated UNCLOS by:

- (i) “failing to comply with the [25 May 2019] provisional measures order” of the International Tribunal for the Law of the Sea (“ITLOS”); and
- (ii) “continuing to aggravate the dispute between the Parties”.⁵

The Russian Federation raised preliminary objections to the jurisdiction of the Arbitral Tribunal on the following grounds:

- (i) “that the dispute concerns military activities and is therefore excluded from the Tribunal’s jurisdiction pursuant to Article 298(1)(b) of UNCLOS”;
- (ii) “that UNCLOS does not provide for an applicable immunity”;
- (iii) “that the Tribunal has no jurisdiction over alleged breaches of the ITLOS Provisional Measures Order and Article 279 of UNCLOS”; and
- (iv) “that Ukraine has not complied with Article 283 of UNCLOS”.⁶

The Arbitral Tribunal decided, in [Procedural Order No. 2](#), that these preliminary objections would be addressed in a preliminary phase of the proceedings. Ukraine was accordingly invited to file a written pleading on the preliminary objections. From 11 to 15 October 2021, the Arbitral Tribunal held a hearing on the preliminary objections at the Peace Palace, The Hague. The Parties’ written pleadings and the opening statements presented by the Agents of the Parties at the hearing are available on the [PCA website](#).

⁴ Award on the Preliminary Objections of the Russian Federation, para. 19.

⁵ Award on the Preliminary Objections of the Russian Federation, para. 19.

⁶ Award on the Preliminary Objections of the Russian Federation, para. 21.

In its award of 27 June 2022, the Arbitral Tribunal unanimously:

Article 298(1)(b) Objection

- a. *Finds* that the events of 25 November 2018 until a point in time after the Ukrainian naval vessels left anchorage area No. 471 constitute “military activities” excluded from the jurisdiction of the Arbitral Tribunal in accordance with Article 298(1)(b) of the Convention;
- b. *Finds* that the events following the arrest of the Ukrainian naval vessels do not constitute “military activities” excluded from the jurisdiction of the Arbitral Tribunal in accordance with Article 298(1)(b) of the Convention;
- c. *Decides* that the determination of the precise point at which the events ceased to be “military activities” within the meaning of Article 298(1)(b) of the Convention shall be ruled upon in conjunction with the merits;

Article 288(1) Objection

- d. *Declares* that the objection that UNCLOS does not provide for an applicable immunity does not possess an exclusively preliminary character;
- e. *Decides* that the objection that UNCLOS does not provide for an applicable immunity shall be ruled upon in conjunction with the merits;

Article 290 and 296 Objection

- f. *Rejects* the objection that the Arbitral Tribunal has no jurisdiction over alleged breaches of the ITLOS Provisional Measures Order;

Article 279 Objection

- g. *Declares* that the objection that Article 279 of the Convention provides no basis for the Arbitral Tribunal to claim jurisdiction as to the alleged aggravation of the dispute does not possess an exclusively preliminary character;
- h. *Decides* that the objection that Article 279 of the Convention provides no basis for the Arbitral Tribunal to claim jurisdiction as to the alleged aggravation of the dispute shall be ruled upon in conjunction with the merits;

Article 283 Objection

- i. *Rejects* the objection that Ukraine has not complied with Article 283 of the Convention;

Further Proceedings

- j. *Decides* that it has jurisdiction over the dispute between the Parties, subject to the jurisdictional limitations set out above;
- k. *Decides* that the proceedings on the merits are hereby resumed, and that the Russian Federation shall submit a Counter-Memorial no later than six months from the date of this Award;

Costs

1. *Decides* that the question of costs shall be ruled upon in conjunction with the merits.⁷

The five-member Arbitral 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 proceedings.

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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 four inter-state disputes, 106 investor-State arbitrations, 71 cases arising under contracts involving a State or other public entity, and two other disputes. More information about the PCA can be found at www.pca-cpa.org.

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⁷ Award on the Preliminary Objections of the Russian Federation, para. 208.