

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**

- between -

UKRAINE

- and -

THE RUSSIAN FEDERATION

- in respect of a -

**DISPUTE CONCERNING THE DETENTION OF UKRAINIAN NAVAL VESSELS AND
SERVICEMEN**

PROCEDURAL ORDER NO. 6

ARBITRAL TRIBUNAL:

**Professor Donald McRae (President)
Judge Gudmundur Eiriksson
Judge Rüdiger Wolfrum
Sir Christopher Greenwood
Professor Alexander N. Vylegzhanin**

REGISTRY:

The Permanent Court of Arbitration

WHEREAS on 22 November 2019, the Arbitral Tribunal issued Procedural Order No. 1, fixing, among others, the procedural timetable and the Rules of Procedure (the “**Rules of Procedure**”) for the present arbitration;

WHEREAS on 27 June 2022, the Arbitral Tribunal issued its Award on the Preliminary Objections of the Russian Federation, in which it ruled on certain preliminary objections, while joining others to the merits phase, and directed the Russian Federation to submit its Counter-Memorial no later than six months from the date of the Award;

WHEREAS on 20 December 2022, following an application from the Russian Federation and objection from Ukraine, the Arbitral Tribunal issued Procedural Order No. 4, extending the time limit for the submission of the Russian Federation’s Counter-Memorial to 24 March 2023;

WHEREAS on 2 March 2023, following an application for further extension from the Russian Federation and objection from Ukraine, the Arbitral Tribunal directed the Russian Federation to submit its Counter-Memorial no later than 14 April 2023;

WHEREAS on 4 April 2023, the Permanent Court of Arbitration (“**PCA**”), on instructions from the President and other members of the Arbitral Tribunal, wrote to the Parties advising of the passing of Judge Vladimir V. Golitsyn, the Russian Federation’s party-appointed member of the Arbitral Tribunal, on 26 March 2023;

WHEREAS on 14 April 2023, the Russian Federation submitted its Counter-Memorial of the same date, accompanied by a list of exhibits and a list of legal authorities;

WHEREAS on 25 April 2023, the Russian Federation requested an extension until 31 May 2023 of the time limit for the appointment of a replacement arbitrator for the late Judge Golitsyn, and separately requested for the suspension of the proceedings on account of the outstanding balance of the supplementary deposit to be paid by Ukraine;

WHEREAS on 3 May 2023, Ukraine opposed the Russian Federation’s requests, stating that it “continues to work diligently on the matter and will provide the Tribunal with further information [regarding the payment of the balance of the supplementary deposit] as soon as it is able”;

WHEREAS on 9 May 2023, the PCA wrote to the Parties, advising that the President and other members of the Arbitral Tribunal, in the interest of good order in the progression of this arbitration, have no objection to extending the time limit for the appointment of a replacement arbitrator until 31 May 2023;

WHEREAS on 30 May 2023, the Russian Federation appointed Professor Alexander N. Vylegzhanin as an arbitrator pursuant to Article 6(1) of the Rules of Procedure and Article 3(c) and (f) of Annex VII to the 1982 United Nations Convention on the Law of the Sea;

WHEREAS on 13 June 2023, the reconstituted Arbitral Tribunal, through the PCA, welcomed the appointment of Professor Vylegzhanin, transmitted the latter’s signed Declaration of Acceptance and Statement of Impartiality and Independence, and indicated that it will revert to the Parties in due course in respect of other matters raised in their communications of 25 April and 3 May 2023;

WHEREAS on 21 July 2023, the Arbitral Tribunal wrote to the Parties concerning the Russian Federation’s application of 25 April 2023 for suspension of the proceedings and, following paragraph 5(g) of Procedural Order No. 1, requested that the Parties indicate, by 4 August 2023, any views they may have on (a) the request for suspension, and (b) the further timetable of these proceedings, and in

particular whether they wish to have the possibility of making further written submissions or whether they wish to proceed directly to an oral hearing;

WHEREAS on 1 August 2023, the Russian Federation reaffirmed its position in its letter of 25 April 2023, and reiterated its request that the Arbitral Tribunal exercise its discretion under Article 27(3) of the Rules of Procedure and “order the suspension or termination of the proceedings or take such other steps as it considers appropriate”;

WHEREAS on 2 August 2023, Ukraine stated with respect to the supplementary deposit that it “anticipates paying the balance by the end of [the 2023] calendar year”, and that it “remains committed to completing the supplementary deposit in full by the end of the year”. With respect to the procedural timetable, Ukraine noted that the Russian Federation’s Counter-Memorial did not contain any counter-claims and, the issues raised therein having been briefed at the preliminary objections phase, requested that the Tribunal proceed to set a date for a hearing on the merits, without need for a second round of written pleadings;

WHEREAS, on 10 August 2023, the Arbitral Tribunal noted the Parties’ respective letters of 1 and 2 August 2023, stating that the funds it currently has would not permit it to hold a hearing before receipt of Ukraine’s deposit, and inviting each Party to provide any further observations on the matter by 24 August 2023;

WHEREAS, on 23 August 2023, the Russian Federation maintained its request in its letter of 1 August 2023 that the proceedings be suspended or terminated pursuant to Article 27(3) of the Rules of Procedure, and that should proceedings continue, for reasons articulated, a second round of written submissions on the merits be directed as “both necessary and justified”;

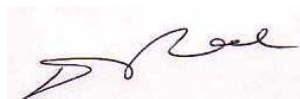
WHEREAS, on 24 August 2023, Ukraine reiterated its position that suspension or termination would be inappropriate and prejudicial, that Ukraine “has committed to payment by the end of the 2023 calendar year”, and that, for reasons set out in its letter, it opposes a second round of written submissions, and requests that a hearing on the merits be scheduled for early 2024;

THE ARBITRAL TRIBUNAL HEREBY DECIDES:

1. Noting Ukraine’s commitment to completing its supplementary deposit in full by the end of the 2023 calendar year, consideration of the Russian Federation’s application to suspend or terminate proceedings under Article 27(3) of the Rules of Procedure is hereby deferred.
2. The Tribunal invites Ukraine to make further written submissions, by way of a Reply, addressing the Russian Federation’s preliminary objections that the Tribunal had joined to the merits phase, and any new matter raised in the Russian Federation’s Counter-Memorial, in particular the response of the Russian Federation to the request of the Arbitral Tribunal in its Award on Preliminary Objections, at para. 125, for “further elucidation by the Parties before reaching a definitive conclusion on when military activities came to an end”, by **Monday, 11 December 2023**.
3. The Russian Federation is invited to submit a Rejoinder to the matters raised in Ukraine’s Reply, by **Monday, 12 February 2024**.
4. The Arbitral Tribunal shall thereafter issue further directions for a hearing on the merits to be held in April or May 2024, in consultation with the Parties.

Dated: 9 October 2023

ON BEHALF OF THE ARBITRAL TRIBUNAL

A handwritten signature in black ink, appearing to read 'D. McRae', is centered on a light pink rectangular background.

Professor Donald McRae
President