

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

THE HAGUE, 26 MARCH 2024

Publication of Decision on Challenges by the Russian Federation against Professor Donald McRae and Judge Rüdiger Wolfrum

In an arbitration under Annex VII to the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”) relating to the dispute concerning the detention of Ukrainian naval vessels and servicemen, a [Decision on the Challenges](#) by the Russian Federation against Professor Donald McRae, President and Member of the Arbitral Tribunal, and Judge Rüdiger Wolfrum, Member of the Tribunal, dated 6 March 2024 has been published on the website of the Permanent Court of Arbitration (“PCA”). The PCA acts as registry for the proceedings. On the same date, Professor McRae resigned as President and Member of the Arbitral Tribunal and Judge Wolfrum resigned as Member of the Arbitral Tribunal.

The arbitration concerns the interpretation and application of UNCLOS in respect of a dispute that arose from events which took place on 24 to 25 November 2018, involving the arrest and detention by the Russian Federation of three Ukrainian naval vessels (the *Berdyansk*, the *Nikopol* and the *Yani Kapu*) and their respective crew of 24 Ukrainian naval personnel for alleged violations of Russian criminal law.

The Decision addresses the Challenges raised on 24 November 2023 by the Russian Federation against Professor McRae and Judge Wolfrum for lack of independence and impartiality as a result of their votes in support of the Institute of International Law (Institut de Droit International, “IDI”) declaration of 1 March 2022, entitled “Declaration of the Institute of International Law on Aggression in Ukraine” (“IDI Declaration”). In accordance with Article 19, paragraph 1, of the Rules of Procedure of the Arbitral Tribunal and Procedural Order No. 8 dated 15 December 2023, the Decision was issued by the three unchallenged Members of the Arbitral Tribunal, with Judge Gudmundur Eiriksson presiding and without the participation of Professor McRae and Judge Wolfrum

Following an exchange of submissions of the Parties and comments of Professor McRae and Judge Wolfrum, the three unchallenged Members of the Arbitral Tribunal, after carefully reviewing the text of the IDI Declaration and the circumstances of its adoption and having concluded that Professor McRae’s and Judge Wolfrum’s votes in favour of the IDI Declaration raised justifiable doubts as to their impartiality in the arbitration, upheld the Challenges to Professor McRae and Judge Wolfrum by two votes to one; Judge Gudmundur Eiriksson and Professor Alexander N. Vylegzhanin voted in favour and Sir Christopher Greenwood voted against.

Sir Christopher Greenwood appended a [Dissenting Opinion](#) to the Decision. While agreeing with the decision of the majority as regards the substantive standard to be applied to the Challenges in the present case, he could not agree with the majority’s application of this standard to the facts of the case and stated that, in his opinion, the Challenges brought by the Russian Federation against Professor McRae and Judge Wolfrum should have been dismissed.

Background of 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 remaining members of the Arbitral Tribunal are Judge Gudmundur Eiriksson (Iceland), who acts as Acting President pending the appointment of a new President, Professor Alexander N. Vylegzhanin (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. 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 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 seven inter-State disputes, 103 investor-State arbitrations, 94 cases arising under contracts involving a State or other public entity, and three other disputes. More information about the PCA can be found at www.pca-cpa.org.

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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”.