

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**

TERMS OF APPOINTMENT

ARBITRAL TRIBUNAL:

**Professor Donald McRae (President)
Judge Gudmundur Eiriksson
Judge Rüdiger Wolfrum
Judge Vladimir Golitsyn
Sir Christopher Greenwood**

REGISTRY:

The Permanent Court of Arbitration

1. The Parties

UKRAINE

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Ms. Ksenia Galkina
Third Secretary
Ministry of Foreign Affairs of the Russian
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2. The Institution of Arbitral Proceedings

These proceedings were instituted on 1 April 2019, when Ukraine served on the Russian Federation a “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 the Grounds on which it is Based” (“Notification and Statement of Claim”) under Annex VII to the 1982 United Nations Convention on the Law of the Sea (the “Convention”). The Notification and Statement of Claim refers to a “dispute concerning the immunity of three Ukrainian naval vessels and the twenty-four servicemen on board”.

3. Procedural Rules

The proceedings shall be conducted in accordance with the Convention, including Annex VII to the Convention, and such rules of procedure as the Arbitral Tribunal may adopt, after ascertaining the views of the Parties.

4. The Arbitral Tribunal

- 4.1 In its Notification and Statement of Claim, Ukraine appointed Sir Christopher Greenwood as arbitrator pursuant to Article 3, subparagraph (b), of Annex VII to the Convention. His contact details are as follows:

Sir Christopher Greenwood, GBE, CMG, QC
Iran-United States Claims Tribunal
Parkweg 13
2585 JH The Hague
The Netherlands

Sir Christopher Greenwood, GBE, CMG, QC
Magdalene College
Cambridge CB3 0AG
United Kingdom

E-mail: c.j.greenwood123@gmail.com

- 4.2 Pursuant to Article 3, subparagraph (c), of Annex VII to the Convention, the Russian Federation appointed H.E. Judge Vladimir Vladimirovich Golitsyn as arbitrator by a Note Verbale addressed to Ukraine on 30 April 2019. His contact details are as follows:

Judge Vladimir Vladimirovich Golitsyn
Lomonosov Moscow State University
Faculty of Law
Leninskie Gory 1 MSU, build. 4
119991 Moscow GSP-1
Russia

E-mail: vgolitsyn@gmail.com

- 4.3 Considering that the Parties had not reached agreement on the appointment of the other three members of the Arbitral Tribunal, on 12 June 2019, Ukraine requested that their appointment be made by the President of the International Tribunal for the Law of the Sea, pursuant to Article 3, subparagraph (d), of Annex VII to the Convention. H.E. Judge Jin-Hyun Paik, President of the International Tribunal for the Law of the Sea, accordingly conducted consultations with the Parties and, pursuant to Article 3, subparagraph (e), of Annex VII to the Convention, on 8 July 2019, appointed the three remaining arbitrators and the President of the Arbitral Tribunal from among them.

- 4.4 Professor Donald McRae was appointed as arbitrator and President of the Arbitral Tribunal. His contact details are as follows:

Professor Donald M. McRae
Faculty of Law, University of Ottawa
57 Louis Pasteur St.
Ottawa, Ontario K1N 6N5
Canada

E-mail: donald.mcrae@uottawa.ca

- 4.5 H.E. Judge Gudmundur Eiriksson was appointed as arbitrator. His contact details are as follows:

Judge Gudmundur Eiriksson
Jindal Global Law School
Sonipat Narela Road
Sonipat 131001, Haryana
India

E-mail: geiriksson@jgu.edu.in

- 4.6 H.E. Judge Rüdiger Wolfrum was appointed as arbitrator. His contact details are as follows:

Judge Rüdiger Wolfrum
Max Planck Institute for Comparative Public Law and International Law
Im Neuenheimer Feld 535
69120 Heidelberg
Germany

E-mail: wolfrum@mpil.de

- 4.7 The members of the Arbitral Tribunal declare that they are and shall remain impartial and independent of the Parties. The members of the Arbitral Tribunal shall promptly notify the Parties and the other arbitrators of any circumstances likely to give rise to justifiable doubts as to their impartiality or independence that may subsequently come to their attention during this arbitration.

- 4.8 The Parties confirm that the members of the Arbitral Tribunal have been validly appointed in accordance with the Convention, and that they have no objection to the appointment of any member of the Arbitral Tribunal on the grounds of conflict of interest or lack of independence or impartiality in respect of matters known to them at the date of these Terms of Appointment.

5. Registry

- 5.1 By e-mail of 19 July 2019, the President of the Arbitral Tribunal informed the Secretary-General of the Permanent Court of Arbitration (“PCA”) that the Parties had agreed to request the PCA to act as registry in the present arbitration (“**Registry**”). By letter of the same date, the Secretary-General confirmed that the PCA was prepared to act in this capacity.

- 5.2 The Secretary-General of the PCA shall appoint a legal officer from the staff of the Registry to serve as registrar (the “**Registrar**”) for these proceedings. For this purpose, the Secretary-General has appointed Mr. Martin Doe, Senior Legal Counsel of the PCA, to serve as Registrar.
- 5.3 The Registry shall maintain an archive of the arbitration proceedings, administer the amounts deposited by the Parties, confirm the timing and completeness of filings and produce certified copies of filings or Tribunal correspondence and decisions as necessary, and otherwise assist with the administrative conduct of the proceedings.
- 5.4 The Registry shall provide such other registry services as the Arbitral Tribunal or its President may direct.
- 5.5 If needed, the Registry will make its hearing and meeting rooms in the Peace Palace and at other locations around the world available to the Parties and the Arbitral Tribunal at no charge. The costs of catering, court reporter services, technical support and other costs and services associated with hearings or meetings at the Peace Palace or elsewhere shall be borne by the Parties.
- 5.6 Work carried out by the Registry shall be billed in accordance with the PCA’s schedule of fees. The Registry’s fees and expenses shall be paid in the same manner as the Arbitral Tribunal fees and expenses referred to in section 8.
- 5.7 The contact details of the Registry are as follows:

Permanent Court of Arbitration

Mr. Martin Doe
Senior Legal Counsel
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

Tel: +31 70 302 4165 (general)
+31 70 302 4140 (direct)
Fax: +31 70 302 4167
E-mail: mdoe@pca-cpa.org
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6. Privileges and Immunities

- 6.1 Having regard to Article 24 of the 1899 Hague Convention on the Pacific Settlement of International Disputes and Article 46 of the 1907 Hague Convention on the Pacific Settlement of International Disputes, each Party to this arbitration shall, within its territory, accord to the members of the Arbitral Tribunal, the staff of the Registry and any other persons, including technical experts, engaged by the Arbitral Tribunal privileges and immunities that are the same as those accorded to diplomatic agents under the 1961 Vienna Convention on Diplomatic Relations (“**Vienna Convention**”). In particular, no arbitrator or member of the staff of the

Registry or other person engaged by the Arbitral Tribunal shall be required to be a party or witness in any judicial or other proceedings arising out of the arbitration.

- 6.2 Pursuant to the Agreement between the Permanent Court of Arbitration and the Kingdom of the Netherlands Concerning the Headquarters of the Permanent Court of Arbitration, arbitrators, “in the exercise of their duties, enjoy such immunities as are accorded to diplomatic agents pursuant to the Vienna Convention”, and participants in the arbitral proceedings, including as “witness, expert, counsel, party, agent or other party representative”, enjoy “immunity from criminal, civil and administrative jurisdiction in respect of acts performed in the fulfilment of their duties”. In addition, witnesses enjoy “immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the Kingdom of the Netherlands”.
- 6.3 The Parties shall not seek to make the Arbitral Tribunal or any arbitrator or member of the staff of the Registry liable in respect of any act or omission in connection with any matter related to the arbitration.

7. Communications

- 7.1 The Parties shall not engage in any *ex parte* oral or written communications with any member of the Arbitral Tribunal in connection with the subject matter of the arbitration or any procedural issues which are related to the proceedings.
- 7.2 The Parties shall send all communications for the attention of the Arbitral Tribunal by e-mail to the Registry, for onward transmission to each member of the Arbitral Tribunal and the opposing Party.
- 7.3 Written pleadings and other formal submissions, along with documentary and other evidence, shall be delivered in such manner and format as the Arbitral Tribunal shall direct by procedural order after consulting with the Parties.
- 7.4 All communications from the Registry to the Parties will be made by e-mail or courier.
- 7.5 The Parties shall send copies of correspondence between them to the Arbitral Tribunal only if it pertains to a matter in which the Arbitral Tribunal is required to take action or be apprised of a relevant event.
- 7.6 All written communications shall be sent to:
- | | |
|--------------------|---|
| Parties: | to the addresses of the Agents and Counsel set forth in section 1; |
| Arbitral Tribunal: | to the Registry, for onward transmission to the addresses set forth in section 4; |
| Registry: | to the address set forth in section 5. |
- 7.7 Any change of name, description, address, telephone number, facsimile number or e-mail address shall immediately be notified by the Party or member of the Arbitral Tribunal concerned to the Registry. Failing such notification, communications sent in accordance with this section shall be valid.

8. Fees and Expenses of the Arbitral Tribunal

- 8.1 Each member of the Arbitral Tribunal shall be remunerated at a rate of EUR 600 per hour for all time devoted to the arbitration with a maximum of eight compensable hours per day, with the exception of time spent on travel which shall be remunerated at fifty percent of the hourly rate.
- 8.2 Members of the Arbitral Tribunal shall be reimbursed in respect of all expenses reasonably incurred in connection with the proceedings (including but not limited to travel expenses, accommodation costs, telephone, fax, delivery and copying). When travelling by air, members of the Arbitral Tribunal shall be entitled to the reimbursement of fares at no greater cost than that of business class travel. When travelling by train, members of the Arbitral Tribunal shall be entitled to first class travel. In appropriate cases, the Registry may make advances to the members of the Arbitral Tribunal in anticipation of travel and other expenses.
- 8.3 The members of the Arbitral Tribunal shall furnish the Registry with invoices in respect of all payments to be made from the sums deposited under section 9. Invoices shall be submitted periodically and shall indicate the time spent by the member of the Arbitral Tribunal and any disbursements incurred.
- 8.4 All payments to the Arbitral Tribunal shall be made from the deposits referred to in section 9.

9. Deposits to Secure the Fees and Expenses of the Arbitral Tribunal

- 9.1 A deposit to secure the fees and expenses of the Arbitral Tribunal shall be established with the PCA. The Parties shall contribute to this deposit in equal shares, without prejudice to any decision that the Arbitral Tribunal may take pursuant to Article 7 of Annex VII to the Convention.
- 9.2 The Registry will review the adequacy of the deposit from time to time and may, after consultation with the President of the Arbitral Tribunal, request the Parties to make supplementary deposits.
- 9.3 Any unused balance held on deposit at the end of the arbitration shall be returned to the Parties as directed by the Arbitral Tribunal.