

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

PCA Case No. 2017-06

Permanent Court of Arbitration
Peace Palace
The Hague
The Netherlands

Day 1
Evidentiary Hearing

Monday, 23 September 2024

Before:

JUDGE JIN-HYUN PAIK
JUDGE BOUALEM BOUGUETAIA
JUDGE ALONSO GÓMEZ-ROBLEDO
PROFESSOR ALEKSANDR VYLEGZHANIN
PROFESSOR VAUGHAN LOWE KC

DISPUTE CONCERNING COASTAL STATE RIGHTS
IN THE BLACK SEA, SEA OF AZOV AND KERCH STRAIT

(UKRAINE v THE RUSSIAN FEDERATION)

DR LEVENT SABANOĞULLARI, Registrar and senior legal counsel,
MS JINYOUNG SEOK, legal counsel, MS KHADIJA AHMED, assistant
legal counsel, DR STEFAN SCHAEFERLING, assistant legal
counsel, and MR SCOTT GRABER, assistant legal counsel,
appeared for the Permanent Court of Arbitration.

Transcript produced by Trevor McGowan,
Georgina Vaughn and Lisa Gulland.
Trevor McGowan CR

09:15

1

Monday, 23 September 2024

2

(10.02 am)

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THE PRESIDENT: Good morning, everyone. I have the pleasure

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of opening this hearing in the Dispute Concerning

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Coastal State Rights in the Black Sea, Sea of Azov and

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Kerch Strait, instituted by Ukraine against the Russian

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Federation under Annex VII to the United Nations

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Convention on the Law of the Sea. The present hearing

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will hear the parties' arguments on the merits and the

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remaining issues of jurisdiction and admissibility.

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I am joined today by my colleagues and fellow

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members of the Arbitral Tribunal in these proceedings:

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to my far right, Professor Aleksandr Vylegzhanin and

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Judge Boualem Bouguetaia; to my far left,

15

Professor Vaughan Lowe and Judge Alonso Gómez-Robledo.

16

My name is Jin-Hyun Paik.

17

On behalf of the Arbitral Tribunal, I welcome the

18

Agents, Co-Agent, counsel, advisors, assistants and

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observers of Ukraine and the Russian Federation to this

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hearing, and express our gratitude to the Parties for

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their cooperation in the conduct of these proceedings.

22

Pursuant to Articles 286 and 287 of UNCLOS,

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Article 11 of the Rules of Procedure of this arbitration

24

and Procedural Order No. 12, the Arbitral Tribunal shall

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sit from today, 23 September 2024, until 5 October 2024.

10:04

1 I now call on the Registrar to summarise the
2 procedure to date and to read out the submissions of the
3 Parties, as formulated in their written pleadings.

4 THE REGISTRAR: Thank you, Mr President.

5 This arbitration was instituted by Ukraine on
6 16 September 2016, when it served on the Russian
7 Federation a "Notification under Article 287 and
8 Annex VII, Article 1 of class and Statement of Claim and
9 Grounds on which it is Based", dated 14 September 2016,
10 in respect of a "Dispute Concerning Coastal State Rights
11 in the Black Sea, Sea of Azov and Kerch Strait".

12 On 21 February 2020, the Arbitral Tribunal issued
13 its Award Concerning Preliminary Objections. In the
14 operative part, the Arbitral Tribunal unanimously:

15 "a. Uph[eld] the Russian Federation's objection
16 that the Arbitral Tribunal has no jurisdiction over
17 Ukraine's claims, to the extent that a ruling of the
18 Arbitral Tribunal on the merits of Ukraine's claims
19 necessarily requires it to decide, directly or
20 implicitly, on the sovereignty of either party over
21 Crimea;

22 "b. F[ound] that the Russian Federation's objection
23 that the Arbitral Tribunal has no jurisdiction over
24 Ukraine's claims concerning activities in the Sea of
25 Azov and in the Kerch Strait does not possess

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1 an exclusively preliminary character, and accordingly
2 decides to reserve this matter for consideration and
3 decision in the proceedings on the merits;

4 "c. Reject[ed] the other objections of the Russian
5 Federation to its jurisdiction;

6 "d. Request[ed] Ukraine to file a revised version
7 of its Memorial, which shall take full account of the
8 scope of, and limits to, the Arbitral Tribunal's
9 jurisdiction as determined in the present Award; and

10 "e. Decid[ed] that each Party shall bear its own
11 costs."

12 Likewise, on 21 February 2020, the Arbitral Tribunal
13 issued Procedural Order No. 6, resuming the proceedings
14 on merits and fixing the procedural timetable for
15 further proceedings.

16 In Procedural Orders Nos. 7, 8, 9, 10 and 11, dated
17 respectively 17 November 2020, 13 December 2021,
18 20 July 2022, 26 June 2023 and 29 September 2023,
19 the Arbitral Tribunal, having ascertained the views of
20 the Parties, made certain modifications to the
21 procedural calendar sent out in Procedural Order No. 6.

22 On 20 May 2021, Ukraine submitted its Revised
23 Memorial.

24 On 14 October 2022, the Russian Federation submitted
25 its Counter-Memorial.

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1 On 24 March 2023, Ukraine submitted its Reply.

2 On 8 December 2023, the Russian Federation submitted
3 its Rejoinder.

4 On 30 July 2024, the Arbitral Tribunal, having
5 ascertained the views of the Parties, issued Procedural
6 Order No. 12, which decided that the hearing would be
7 held at the Peace Palace in The Hague from 23 September
8 to 5 October 2024.

9 In its Revised Memorial, Ukraine requests the
10 Arbitral Tribunal to adjudge and declare that:

11 "a. The Russian Federation has violated
12 Articles 38, 43 and 44 of the Convention by:
13 constructing a bridge across the Kerch Strait that
14 permanently impedes the ability of vessels that
15 previously transited the Strait or foreseeably may have
16 transited the Strait from doing so; failing to share
17 information as to threats to safe navigation caused by
18 the bridge; delaying passage through the strait for
19 vessels that are navigating to and from Ukrainian ports
20 and inspecting such vessels; and restricting the
21 navigation of all foreign governmental vessels through
22 the Strait for a period of over six months.

23 "b. The Russian Federation has violated Articles 2,
24 58 and 87 of the Convention by stopping and inspecting
25 Ukrainian and third-State vessels in the Sea of Azov

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1 travelling to and from Ukrainian ports.

2 "c. The Russian Federation has violated Articles 58
3 and 92 of the Convention by stopping and inspecting
4 Ukrainian-flagged vessels in the Sea of Azov travelling
5 to and from Ukrainian ports.

6 "d. The Russian Federation has violated
7 Articles 2(3) and 91 of the Convention by unlawfully
8 seizing and re-flagging two Ukrainian-flagged JDRs.

9 "e. The Russian Federation has violated
10 Articles 123, 192, 194, 198, 199, 204, 205 and 206 of
11 the Convention by failing to assess, monitor and protect
12 against potential adverse effects on the marine
13 environment caused by its construction activities in the
14 Kerch Strait.

15 "f. The Russian Federation has violated
16 Articles 123, 192, 194, 204, 205 and 206 of the
17 Convention by failing to cooperate and share information
18 with Ukraine and other potentially affected States
19 concerning the environmental impact of its construction
20 activities in the Kerch Strait.

21 "g. The Russian Federation has violated
22 Articles 123, 192, 194, 198, 199, 204 and 205 of the
23 Convention by failing to communicate or cooperate with
24 Ukraine concerning the May 2016 oil spill off the coast
25 of Sevastopol.

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1 "h. The Russian Federation has violated Article 303
2 of the Convention by failing to protect unique
3 archaeological and historical objects found at sea.

4 "i. The Russian Federation has violated
5 Articles 279 and 300 of the Convention by aggravating
6 and extending the dispute between the parties since the
7 commencement of this arbitration in September 2016."

8 Ukraine further requests the Arbitral Tribunal to
9 order the Russian Federation to:

10 "a. Cease immediately all efforts to stop, delay,
11 or otherwise impede free navigation and transit passage
12 of Ukrainian and third-State vessels through the Kerch
13 Strait and in the Sea of Azov.

14 "b. Provide appropriate assurances and guarantees
15 of non-repetition with regard to its violations of the
16 rights to transit passage, free navigation, and
17 exclusive flag State jurisdiction, including specific
18 commitments that Russia will not hamper or impede
19 transit passage in the Kerch Strait or interfere with
20 the navigation of vessels traveling to or from Ukraine's
21 Sea of Azov ports.

22 "c. Provide appropriate assurances and guarantees
23 of non-repetition with regard to its violations of the
24 duty to protect and preserve the marine environment and
25 to cooperate with other States to that end, including

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1 specific commitments to assess the environmental impact
2 of activities within its jurisdiction that may
3 reasonably be expected to harm the marine environment of
4 the Black Sea, Sea of Azov or Kerch Strait, and to
5 monitor the environmental effects of any such activities
6 in accordance with accepted scientific standards.

7 "d. Provide appropriate assurances and guarantees
8 of non-repetition with regard to its failure to
9 communicate to Ukraine, other potentially affected
10 States, and competent international organisations,
11 an appropriate assessment of the potential effects on
12 the marine environment of its construction activities in
13 the Kerch Strait, as well as its failure to report the
14 results of any subsequent environmental monitoring.

15 "e. Cease excavating underwater cultural heritage
16 sites until it can guarantee that any further excavation
17 will comply with internationally accepted archaeological
18 standards.

19 "f. Provide appropriate assurances and guarantees
20 of non-repetition with regard to its failure to protect
21 archaeological and cultural objects found at sea."

22 Ukraine also requests the Arbitral Tribunal to order
23 the Russian Federation to:

24 "a. Modify the central span of the Kerch Strait
25 bridge to provide for a height clearance sufficient to

10:11

1 restore passage for merchant and other vessels that
2 previously transited to the Strait, as well as those
3 that may foreseeably transit the strait in the future.

4 "b. Release to Ukraine the two Ukrainian-flagged
5 JDRs it unlawfully seized and reflagged so as to
6 re-establish Ukraine's exclusive jurisdiction over the
7 vessels.

8 "c. Withdraw all claims to have re-flagged under
9 the Russian flag the two Ukrainian flagged JDRs
10 it unlawfully seized.

11 "d. Conduct immediately further monitoring and
12 studies of the construction projects undertaken in the
13 Kerch Strait, and their impact on the marine environment
14 of the Black Sea Basin, as are necessary to determine
15 the measures most capable of identifying and repairing
16 any environmental harm resulting from the construction
17 phase of the Kerch Strait construction projects and
18 mitigating any anticipated, continuing impacts
19 associated with operation of the projects. Such
20 monitoring and studies must include, but are not limited
21 to, those identified by [Ukraine's Expert] and described
22 in Chapter Six, Sections II.A.2 and II.A.3 of Ukraine's
23 Revised Memorial.

24 "e. Invite international participation in its
25 environmental monitoring and studies, including by

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1 representatives of other littoral states of the
2 Black Sea Basin and relevant regional organisations, and
3 make the results thereof available to the general
4 public.

5 "f. Take account of the monitoring and studies
6 conducted pursuant to paragraphs (d) and (e), above, and
7 implement as soon as practicable reparatory and
8 mitigation measures designed to restore the marine
9 environment of the Black Sea Basin as nearly as possible
10 to its condition prior to the construction projects, and
11 to manage as comprehensively as possible the continuing
12 risks of environmental harm associated with operation of
13 the projects. Such reparatory and mitigation measures
14 must include, but are not limited to, those identified
15 by [Ukraine's Expert] and described in Chapter Six,
16 Sections II.A.2 and II.A.3 of Ukraine's Revised
17 Memorial, to the extent that further monitoring and
18 studies indicate such measures are necessary.

19 "g. Within 15 months of the issuance of the Award
20 in this proceeding, publish and communicate to Ukraine,
21 as well as all other interested States and relevant
22 international organisations, a comprehensive report on
23 the reparatory and mitigation measures it has undertaken
24 since the issuance of the Award and will undertake going
25 forward, pursuant to paragraphs (d), (e) and (f) above.

10:14

1 "h. Commence implementation of all reparatory and
2 mitigation measures identified in the report referenced
3 in paragraph (g) above, no later than 18 months after
4 the issuance of the Award in this proceeding.

5 "i. Pay Ukraine financial compensation in an amount
6 to be determined at a later phase of the proceedings."

7 In addition, Ukraine requests the Arbitral Tribunal
8 to "take into account that several of the specific
9 measures necessary to effect reparation also are
10 necessary to ensure cessation of Russia's violations of
11 the Convention"; and that the Arbitral Tribunal "amend
12 Article 22 of the Rules of Procedure to increase from
13 six months to 24 months the period in which the Parties
14 may submit requests for interpretation of the final
15 award or concerning a manner of its implementation".

16 In its Reply, Ukraine submits:

17 "For the reasons set out in this Reply and as set
18 out in Ukraine's Revised Memorial, Ukraine respectfully
19 reaffirms its Submissions, and requests that the
20 Tribunal award Ukraine its costs for these proceedings
21 pursuant to Article 25 of the Rules of Procedure.

22 "Ukraine further requests the Tribunal to adjudge
23 and declare that the Russian Federation has violated
24 Articles 279 and 300 of the Convention by aggravating
25 and extending the dispute between the Parties since the

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1 commencement of this arbitration in September 2016,
2 including Russia's further aggravation of this dispute
3 by unilaterally declaring itself the sole sovereign over
4 the entirety of the Sea of Azov."

5 In its Counter-Memorial, the Russian Federation
6 submits:

7 "For the reasons set out in the Counter-Memorial of
8 the Russian Federation, as well as its prior submissions
9 in these arbitral proceedings, the Russian Federation
10 respectfully requests the Tribunal to adjudge and
11 declare that it is without jurisdiction in respect of
12 the claims that Ukraine submitted in its Revised
13 Memorial. Alternatively, the Russian Federation
14 requests the Tribunal to dismiss Ukraine's requests and
15 prayers for relief in their entirety."

16 In its Rejoinder, the Russian Federation submits:

17 "For the reasons set out in this Rejoinder, the
18 Russian Federation respectfully requests the
19 Arbitral Tribunal:

20 "a. [T]o find that it is without jurisdiction over
21 all of Ukraine's claims;

22 "b. [I]n the alternative, to dismiss all of
23 Ukraine's claims in their entirety."

24 Mr President.

25 THE PRESIDENT: Thank you, Mr Registrar.

10:16

1 The Arbitral Tribunal, in consultation with the
2 Parties, has fixed a schedule for this hearing. At
3 today's morning sitting, each Party's agent will deliver
4 the opening statement. Thereafter, Ukraine will present
5 its oral arguments, followed by the oral arguments of
6 the Russian Federation. Ukraine will deliver its
7 closing statement on 3 October 2024. The Russian
8 Federation will deliver its closing statement on
9 5 October 2024.

10 Article 27, paragraph 3 of the Rules of Procedure
11 states that:

12 "The presentation of the Parties' opening statements
13 at any hearing shall be open to the public. The
14 Arbitral Tribunal, after ascertaining the views of the
15 Parties, shall consider at the appropriate time the
16 extent to which any other parts of hearings shall be
17 open to the public."

18 Paragraph 2 of Procedural Order No. 12 notes the
19 Parties' agreement that:

20 "The opening and closing statements of each Party's
21 Agent will be made accessible to the public through
22 an online stream available on the website of the PCA."

23 Accordingly, I note that this portion of the hearing
24 is being webcast live on the internet. Members of the
25 diplomatic corps and the general public are following

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1 this public portion of the hearing in another room in
2 the Peace Palace. After the statement made by the Agent
3 for each Party, the webcast will end. No other parts of
4 today's proceedings will be webcast.

5 Could I now ask the Agent for each Party to
6 introduce their delegations.

7 First, let me turn the floor over to the Agent for
8 Ukraine, His Excellency Mr Anton Korynevych, to
9 introduce the delegation of Ukraine.

10 H.E. MR KORYNEVYCH: Good morning, Mr President,
11 distinguished members of the Tribunal.

12 The members of Ukraine's delegation today are:
13 advocates Ms Marney Cheek, Mr Jonathan Gimblett,
14 Mr Nikhil Gore, Mr Minwoo Kim, Professor Harold Hongju
15 Koh, Professor Alfred Soons, Professor Jean-Marc
16 Thouvenin; observers Mr Leonid Zaliubovskiy,
17 Mr Viktor Komorin, Mr Vladyslav Smirnov,
18 Mr Serhii Lopatiuk, Ms Svitlana Iskorostenska,
19 Mr Yurii Smirnov.

20 Also we have the representatives of the Embassy of
21 Ukraine here in The Hague, His Excellency Mr Ambassador
22 Oleksandr Karasevych and Ms Mariia Bezdieniezhna.

23 Also as counsel, Ukraine is represented today by
24 Mr Denys Krymov, Ms Kateryna Gipenko,
25 Mr Dmytro Kutsenko, Mr Gabriel Gates,

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1 Ms Ariel Rosenbaum, Mr Georg Stigelbauer.

2 We also have experts here today in the room:¹

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4

5 And also assistants assist our delegation:

6 Ms Dayane Darwich, Ms Julia Hontaruk-Levko,

7 Mr Liam Tormey.

8 Thank you for your attention.

9 THE PRESIDENT: Thank you, Mr Korynevych.

10 I turn now to the Agent for the Russian Federation,

11 His Excellency Mr Gennady Kuzmin, to introduce the

12 delegation of the Russian Federation.

13 H.E. MR KUZMIN: Thank you, Mr President, distinguished

14 members of the Tribunal.

15 The Russian Federation is represented now by: me,

16 Gennady Kuzmin, Ambassador at Large of the Foreign

17 Ministry of the Russian Federation; His Excellency

18 Mr Vladimir Tarabrin, who is Ambassador in the

19 Netherlands, but he is absent for today's meeting,

20 unfortunately, due to other business; Dr Alfredo Crosato

21 Neumann, Mr Lester Antonio Ortega Lemus, Mr Kirill

22 Udovichenko, Mr Sergey Korolev, Mr Konstantin Kosorukov,

23 Mr Yury Andryushkin, Ms Ksenia Galkin, Mr Ruslan Kantur,

24 Mr Mikhail Abramov, Mr Nikolay Zinovyev, Ms Anna

25 Kostina, Mr Oleg Kondrashov, Mr Artem Lupandin,

¹ The experts were not present in the Hearing Room.

10:21

1 Ms Kata Varga, Ms Irina Donskikh, Mr Vladislav
2 Donakanyan, Ms Marina Kulidobrova, Ms Darya
3 Zavershinskaya, Ms Anna Gavkalyuk, Mr Ilia Cherezov.

4 Counsels and advisors of the Russian delegations
5 are: [REDACTED]

6 [REDACTED]
7 as experts and witnesses in these proceedings.

8 And our delegation will be assisted by
9 Ms Svetlana Poliakova and Daria Gorachakova.

10 Thank you.

11 THE PRESIDENT: Thank you, Mr Kuzmin.

12 I now give the floor to the Agent for Ukraine,
13 Mr Korynevych, to proceed with his opening statement.

14 (10.22 am)

15 Opening statement on behalf of Ukraine

16 H.E. MR KORYNEVYCH: Mr President, distinguished members of
17 the Tribunal, it is an honour for me to appear before
18 you today as the Agent of Ukraine.

19 We are here before you to address serious questions
20 under the United Nations Convention on the Law of the
21 Sea. We are here to address whether the core principles
22 in this Convention -- freedom of navigation, a right of
23 transit passage, and protection of the environment and
24 underwater cultural heritage -- are to be respected.

25 The Russian Federation has chosen not to respect these

10:23

1 fundamental principles of the law of the sea. As
2 Ukrainians, we have faced this pattern of Russian
3 behaviour many times, and it is a country that believes
4 it is above the law and can play by its own rules.

5 Ukraine believes that disputes between nations
6 should be settled peacefully. Ukraine is here in this
7 storied Peace Palace to pursue justice and
8 accountability. This pursuit of justice and
9 accountability is part of President Zelenskyy's Peace
10 Formula. Ukraine and its people deserve the restoration
11 of justice.

12 In this case, Ukraine is here to prove Russia's many
13 violations of the law of the sea, and to demonstrate
14 that Russia is not free to rewrite the law of the sea.
15 Instead, it is the States Parties to UNCLOS who have
16 agreed on a constitution for the seas. Every State
17 Party, including the Russian Federation, must abide by
18 those rules.

19 When Ukraine first brought this case in 2016,
20 Russia's disrespect for international law was already
21 apparent: it had started to build the so-called Kerch
22 Bridge, it had begun to harass internationally flagged
23 vessels, it had seized Ukrainian-flagged drilling rigs,
24 it had disturbed precious underwater cultural heritage.
25 Russia also had unlawfully occupied Crimea, and expanded

10:25

1 its aggression to other regions of Ukraine, yet another
2 sign of its lack of respect for Ukraine and
3 international law.

4 As I stand here before you in 2024, Russia's
5 aggression and flagrant disregard for international norms
6 has resulted in bombs, missiles and drones dropping on
7 Ukrainian cities and villages, including maternity
8 hospitals, schools, and port infrastructure in Odesa,
9 a critical port for grain exports. Russia's full-scale
10 invasion and atrocities since February 2022 will be
11 addressed in other appropriate forums.

12 But these two issues -- Russia's unlawful full-scale
13 invasion and Russia's UNCLOS violations in the Sea of
14 Azov, Black Sea and Kerch Strait -- have something
15 fundamental in common: both reflect Russia's contempt
16 for international law as it tries to return to the days
17 of the Soviet Union, and before that the Russian Empire.

18 But Ukraine will never return. Under UNCLOS, all
19 States have rights of navigation, the duty to protect
20 the environment, and the obligation to respect the
21 common heritage of humankind. As Article 89 states:

22 "No State may validly purport to subject any part of
23 the high seas to its sovereignty."

24 These are straightforward rules that this Tribunal
25 is called upon to apply.

10:26

1 There are simple questions at the core of this
2 dispute: can one nation unilaterally remove a large body
3 of water -- an entire sea -- from the legal regime
4 established under UNCLOS? Ukraine will demonstrate this
5 week that the answer to this question can only be "no".

6 The sea that Russia has tried to take for itself is
7 of course the Sea of Azov, and the gateway to that sea
8 is the Kerch Strait. This international strait connects
9 the Sea of Azov to the Black Sea, the other principal
10 body of water at issue in this dispute. The Kerch
11 Strait has been used as a route of trade, travel and
12 cultural exchange for millennia: by Greeks, Romans,
13 Byzantines and many others. In modern times, tens of
14 thousands of vessels transited the strait each year. It
15 provides critical access to Mariupol and Berdyansk,
16 important ports in eastern Ukraine, which for decades
17 have supplied Ukraine's industrial heartland with
18 essential commodities and served as export hubs for
19 Ukrainian steel and minerals.

20 Across this open, vital sea route, the Russian
21 Federation has illegally built a permanent impediment to
22 transit: an exceptionally low bridge. The bridge is
23 lower than suggested by Russia's own studies, lower than
24 requested by Russia's own industrial interests, and
25 lower than any bridge built or even proposed in modern

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1 times over an international strait. As a result, some
2 of the most important classes of vessels used in
3 international trade can no longer pass through the
4 strait: the kind of vessels that carried Ukrainian
5 steel, grain and other foodstuffs to the rest of the
6 world. Today, this bridge not only impedes transit
7 passage, but Russia uses this illegal bridge to send
8 a steady stream of military weapons and supplies to the
9 Crimean Peninsula.

10 Russia wants to take the Sea of Azov and
11 Kerch Strait for itself, and so it has built a great
12 gate at their entrance, to keep international shipping
13 out while allowing small Russian river vessels in.
14 Russia now views the Kerch Strait, the Sea of Azov, and
15 perhaps even parts of the Black Sea, as its proprietary
16 waters. Russia wants these waters to be viewed as part
17 of its 21st century empire.

18 And while you will hear Russia's experts say the
19 Sea of Azov is similar to a lake or a river, Ukraine
20 does not accept this, and neither should this Tribunal.
21 The Sea of Azov is not a lake or a small river delta; it
22 is over 37,000 square kilometres of semi-enclosed sea.
23 The bridge is unlawful and it must come down. The
24 Kerch Strait should be returned to its status before
25 this illegal threat to navigation began.

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1 There are other simple questions at the core of this
2 dispute: can Russia build a bridge -- as well as
3 a pipeline and an undersea cable -- without evaluating
4 the environmental consequences for this sensitive
5 channel and the two unique, semi-enclosed seas that it
6 connects? Can Russia threaten priceless artifacts,
7 giving amateurs free reign amongst centuries-old
8 shipwrecks, and encouraging quick photo-ops, including
9 one featuring the Russian Head of State himself? Again
10 the answers to these questions can only be "no".

11 Unlike Russia, Ukraine has moved away from the past.
12 Since the dissolution of the Soviet Union, Ukraine, as
13 an independent State, has considered UNCLOS as the basis
14 of our maritime relations. In 1992, we deposited with
15 the United Nations coordinates of baselines for
16 measuring Ukraine's territorial sea and exclusive
17 economic zone in the Sea of Azov. It is well known that
18 after the demise of the Soviet Union, Ukraine remained under
19 pressure from its larger neighbour to maintain the
20 Soviet status quo.

21 At the time the Sea of Azov Treaty was signed in
22 2003, for example, Russia was threatening the
23 territorial sovereignty of Ukraine by constructing a dam
24 linking Ukraine's Tuzla Island to Russia's Taman
25 Peninsula in the Kerch Strait. The text of the treaty

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1 does not reflect that Ukraine agreed to Soviet-style
2 treatment of the Sea of Azov. To the contrary, the text
3 of the treaty shows that Ukraine was looking for a path
4 forward, and the treaty's primary purpose was to serve
5 as a framework for future agreement on the proper
6 treatment of the Sea of Azov.

7 Unfortunately, Russia never intended to work
8 cooperatively with Ukraine. Russia illegally takes what
9 it wants, rewrites international law to its liking, and
10 then demands that tribunals like this one accept what
11 it says, as it has always done.

12 Ukraine's case here is about the law of the sea, and
13 only the law of the sea. But even as we turn our focus
14 and attention to the specific facts of this case for the
15 next two weeks, it is Russia that will try to distract
16 the Tribunal by shifting the focus away from Russia's
17 unlawful conduct before its full-scale invasion in
18 February 2022. Instead, Russia will talk about
19 a "change of circumstances", about a new "sovereignty
20 dispute" concerning the coast of the Sea of Azov.

21 When you hear about the alleged change of
22 circumstances in Mariupol, understand that means
23 Russia's two-month, three-week and five-day siege of
24 that port city of half a million people, its destruction
25 of 90% of the residential buildings and its killing of

10:33

1 thousands. When you hear about the alleged sovereignty
2 dispute in eastern and southern Ukraine, understand that
3 this alleged dispute is built upon atrocity: the
4 massacre in Bucha; torture in countless cities, from
5 Kharkiv to Kherson; the unlawful deportation of more
6 than 20,000 Ukrainian children; the destruction of power
7 and heating infrastructure in the dead of winter; and,
8 in the seas, a grain blockade, aimed not at Ukrainians
9 per se, but rather harming those who consume our food
10 and agriculture exports.

11 While I myself and millions of Ukrainians live this
12 war every day, the conduct at issue in this case
13 predates Russia's 2022 full-scale invasion, and Russia's
14 2022 full-scale invasion has no effect on your
15 jurisdiction to hear this case. Russia is asking you to
16 allow it to benefit from those acts, to somehow shield
17 its earlier unlawful conduct by what happened afterward.
18 Can a country unilaterally change the relevant time
19 period of this dispute in an attempt to embrace its
20 imperialist aspirations and escape the law of the sea
21 that binds all States? Once more, the answer can only
22 be "no".

23 Let's turn back to the law of the sea and the facts
24 of this case. We have talked already about Russia's
25 bridge over the Kerch Strait. Russia has impeded

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1 passage through the Kerch Strait and navigation in the
2 Sea of Azov in other ways as well.

3 It has deployed armed men from its Border Guard to
4 inspect more than 1,600 vessels bound for Ukraine,
5 inspecting these vessels at rates far higher than
6 inspections of vessels bound for Russia. It imposed
7 average delays of 40 hours on vessels seeking to transit
8 to Ukrainian Sea of Azov ports; the waiting time for
9 vessels heading to Russia was just three hours. It
10 arbitrarily banned passage through the Kerch Strait to
11 foreign government vessels for a period of six months.
12 It created a mandatory one-way passage regime in the
13 Kerch Strait, and it restricted the pilotage regime such
14 that only Russian vessels can now qualify for
15 exemptions. And those are just its violations in the
16 area of free navigation.

17 When it comes to the environment, Russia has acted
18 recklessly. It failed to undertake adequate assessments
19 of the environmental impacts of any of its construction
20 projects across the Kerch Strait. It continues to hide
21 the core of what it claims were assessments it conducted
22 of its bridge and pipeline across the Kerch Strait, and
23 it admits that it never assessed impacts arising from
24 its installation of a submarine fibre-optic cable at
25 all. Russia also admits that it has made no detailed

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1 environmental monitoring available on the ongoing
2 environmental effects of the so-called Kerch Bridge, and
3 it concedes that no monitoring reports were published or
4 communicated to relevant international organisations
5 with regard to its undersea cable and gas pipelines.

6 And when it comes to underwater cultural heritage,
7 Russia contradicts not only basic principles of
8 preservation, but also basic norms of respect. It
9 disclaims any duty to protect objects of archaeological
10 and historical interest that have been underwater for
11 fewer than 100 years, arguing that it is not required to
12 respect or cooperate with any other State when it comes
13 to, for example, aircraft and shipwrecks dating from the
14 Second World War. It ignores the broad consensus in
15 favour of in situ preservation of underwater artifacts.
16 And it allows amateur Russian divers to disturb, move
17 and remove priceless cultural treasures from
18 centuries-old sites. To Ukraine, these artifacts are
19 the common heritage of humanity. To Russia, they are
20 props for photo opportunities.

21 These actions are wrong. They are, once again,
22 reckless; and they cannot be and must not be reconciled
23 with UNCLOS. Russia's violations of UNCLOS do not just
24 adversely affect Ukraine. For the many States that
25 border the Black Sea, for the many States whose flagged

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1 vessels use the Kerch Strait, and for all the States
2 Parties to UNCLOS, these fundamental principles of
3 transit passage, freedom of navigation, environmental
4 protection and preservation of precious cultural
5 artifacts must not be eroded by the unilateral action of
6 the Russian Federation and its disregard for
7 international rules and norms.

8 If the rules of UNCLOS are applied here, Russia
9 cannot win. So instead, Russia redoubles its claim of
10 dominion over the Sea of Azov and Kerch Strait, arguing
11 that all 37,600 square kilometres of the Sea of Azov
12 constitute internal waters to which the Convention does
13 not apply. This Tribunal should not issue a ruling that
14 would depart from the plain text of UNCLOS and would
15 recognise the largest area of pluri-State internal
16 waters in the world: an area 20 times bigger than any
17 other pluri-State internal waters recognised by the
18 international community. Such a ruling would imperil
19 the rights of Ukraine, and also of the flag States of
20 the many vessels that have historically transported
21 millions of tonnes of grain, steel and other commodities
22 to and from Mariupol and Berdyansk.

23 Mr President, members of the Tribunal, Ukraine is
24 here before you to seek justice and accountability.
25 Ukraine's request of this Tribunal is a simple one: we

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1 ask you to apply the Convention as it is written. Under
2 Article 293, you "shall apply this Convention" to the
3 facts before you, exercise the mandatory jurisdiction
4 that UNCLOS confers on you, and for the small but
5 important slice of Russia's conduct that is before
6 you -- its violations of the law of the sea -- hold
7 Russia accountable.

8 Thank you for your attention today and over the
9 course of the next two weeks.

10 THE PRESIDENT: Thank you, Mr Korynevych.

11 I turn now to the Agent for the Russian Federation,
12 Mr Kuzmin, to proceed with his opening statement.

13 (10.40 am)

14 Opening statement on behalf of the Russian Federation

15 H.E. MR KUZMIN: Thank you very much. Mr President,
16 distinguished members of the Tribunal, it is my honour
17 to appear before you as Agent for the Russian Federation
18 in these proceedings.

19 The Russian Federation highly respects and attaches
20 great importance to the law of the sea and the UN
21 Convention on the Law of the Sea. The USSR took
22 an active part in the negotiations of the Convention,
23 and was among its first signatories, on
24 10 December 1982. The Russian Federation, as the
25 continuing State of the USSR, remains a strict adherent

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1 to the Convention and its strong proponent in the
2 international arena. Unlike certain States, for example
3 the United States of America, which decided not to enter
4 the Convention and not to recognise its dispute
5 settlement procedure, the Russian Federation faithfully
6 follows the letter and spirit of UNCLOS and has agreed
7 to settle arising disputes by independent impartial
8 tribunal.

9 Ukraine's accusations in this case are, of course,
10 completely groundless and hopeless. But before going
11 into legal details, it is important to give some
12 historical context to the case.

13 Ukraine's claim was initially brought in the wake of
14 Crimea's reunification with the Russian Federation. It
15 is just a piece of Ukraine's "lawfare" campaign against
16 the Russian Federation. Crimea has never been part of
17 the Ukrainian State before 1991. For centuries, it had
18 been part of the Russian Empire, and later of the USSR,
19 and its population remains Predominantly Russian and
20 Russian-speaking.

21 After the Maidan coup d'etat of February 2014, when
22 Ukrainian neo-Nazi armed groups toppled the legitimate
23 and internationally recognised President of Ukraine, the
24 people of Crimea exercised their right to
25 self-determination, and escaped from under the rule of

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1 Ukraine's new anti-Russian, neo-Nazi regime. The people
2 of Crimea then decided to reunify with Russia. These
3 decisions were taken freely at an all-Crimean
4 referendum.

5 However, instead of recognising the
6 self-determination of Crimea, like Russia recognised the
7 self-determination of Ukraine in 1991, Ukraine decided
8 to punish Crimeans for their defiance.

9 The Kiev regime imposed a complete blockade on the
10 Crimean Peninsula, blocking supplies of water,
11 electricity, food, medicine and other living
12 necessities. All land routes to Crimea were blocked by
13 Ukrainian forces. This caused tremendous damage and
14 brought enormous suffering to the Crimean population:
15 Russians, Crimean Tatars, Ukrainians and others.
16 Without water, crops failed; without electricity,
17 hospital and schools stopped working. It was
18 an atrocity committed solely to punish Crimeans for
19 their refusal to bow to neo-Nazis in Kiev.

20 Russia had to urgently find solutions to save Crimea
21 from starvation, degradation of agriculture and civil
22 infrastructure, and to supply the population with base
23 necessities. The construction of the Crimean Bridge was
24 a solution. Ukraine vowed to destroy this bridge in
25 order to, once again, cut off Crimea from the mainland,

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1 and subject its population to the effects of Ukraine's
2 continuing blockade. Ukraine conducted repeated attacks
3 on the bridge, by terrorist methods such as exploding
4 a bomb-laden truck at the middle of the bridge, killing
5 several civilians, including children.

6 We are facing a regime that stops at nothing, using
7 starvation to punish Crimeans, trying to destroy their
8 lifeline to the mainland, using terrorist bombings
9 against civilian infrastructure, killing civilians.

10 Look at Donbass. As a result of Ukrainian attacks,
11 thousands of Donbass civilians were brutally killed,
12 including hundreds of children. Hospitals, schools, and
13 critical civilian infrastructure, such as water pumps,
14 have been destroyed by Ukrainian strikes.

15 In light of these brutalities, the illegal nature of
16 the 2014 coup d'etat, and the complete breakdown of all
17 democratic institutions in Ukraine, the Kiev regime
18 cannot even be considered a proper claimant in this
19 case.

20 Ukraine is now trying to use UNCLOS as a pretext,
21 just as it has tried to use other UN Conventions, to
22 artificially expand their scope to include matters not
23 governed by these treaties.

24 At the International Court of Justice, Ukraine tried
25 to accuse Russia of financing terrorism in Donbass and

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1 of racial discrimination in Crimea. Both allegations
2 have totally failed: the ICJ confirmed that the Donetsk
3 and Lugansk People's Republics were not terrorist
4 organisations, did not recognize any of the incidents
5 presented by Ukraine as acts of terrorism, or any
6 involvement of Russia, DPR or LPR in their commission,
7 and rejected Ukraine's claim that Russia was financing
8 terrorism. Likewise, Ukraine has failed to prove that
9 there has been racial discrimination in Crimea. The ICJ
10 also rejected Ukraine's unfounded claim that Russia had
11 not properly protected cultural heritage in Crimea. In
12 its ill-fated claim against Russia under the Genocide
13 Convention, Ukraine failed to prove any of its
14 allegations regarding Russia's supposed breach of that
15 Convention, and effectively became a respondent in its
16 own case, and the court will now determine if Ukraine
17 itself conducted genocide.

18 Just as in the ICJ, Ukraine's allegations in this
19 arbitration are frivolous, and nothing more than yet
20 another example of systematic abuse of the international
21 justice system for purely political purposes.

22 Most of Ukraine's claims, including its main
23 allegations concerning the Crimean Bridge and various
24 sovereign rights, fall squarely outside the scope of the
25 Law of the Sea Convention.

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1 In its Award on Preliminary Objections of
2 21 February 2020 (paragraph 197), the Tribunal had
3 already stated that:

4 "... it lacks jurisdiction over the dispute as
5 submitted by Ukraine to the extent that a ruling of the
6 Arbitral Tribunal on the merits of Ukraine's claims
7 necessarily requires it to decide, expressly or
8 implicitly, on the sovereignty of either Party over
9 Crimea. As a result, the Arbitral Tribunal cannot rule
10 on any claims of Ukraine presented in its Notification
11 and Statement of Claim and its Memorial which are
12 dependent on the premise of Ukraine being sovereign over
13 Crimea."

14 However, Ukraine has not complied with this Award,
15 and has reintroduced several sovereignty-related claims,
16 such as those relating to inspection of vessels in the
17 Azov Sea and the Kerch Strait, the jack-up drilling rigs
18 and navigation regulations in the Kerch Strait. All the
19 above is complete extraneous to the Tribunal's
20 jurisdiction.

21 Furthermore, Russia's activities in the Sea of Azov
22 and the Kerch Strait also fall outside the scope of the
23 Convention.

24 First, the Convention does not cover historic
25 titles. The Sea of Azov and the Kerch Strait have been,

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1 and remain, internal waters by virtue of such title. It
2 remained valid when this arbitration was initiated in
3 2016.

4 Second, the Convention does not regulate internal
5 waters, except in extremely limited circumstances. The
6 Sea of Azov and Kerch Strait constitute such internal
7 waters. This is confirmed by the practice of both
8 Russia and Ukraine, and bilateral agreements between
9 them. This historic title has never been contested by
10 Russia, Ukraine or any third State. Ukraine itself has
11 officially acknowledged the internal and historic status
12 of the Azov Sea and Kerch Strait on numerous occasions,
13 both in treaties and political declarations.

14 Such status was, in particular, confirmed by the
15 2003 bilateral Treaty on Cooperation in the Sea of Azov
16 and the Kerch Strait, and joint statement of the
17 Presidents of Russia and Ukraine. At the time of
18 signature of the treaty, the Ukrainian President,
19 Leonid Kuchma, explicitly stated:

20 "The Sea of Azov and Kerch Strait are historically
21 internal waters of the Russian Federation and Ukraine."

22 President Kuchma then reiterated:

23 "... the Sea of Azov constitutes internal waters of
24 the Russian Federation and Ukraine."

25 In fact, there is nothing unique about such

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1 historical internal waters shared by multiple states.
2 Some examples are the Bay of Piran: Slovenia and
3 Croatia; and the Gulf of Fonseca: Salvador, Honduras and
4 Nicaragua.

5 The status of the Kerch Strait as internal waters
6 also means that, contrary to Ukraine's claim, it is not
7 a strait used for international navigation and,
8 consequently, it is not governed by UNCLOS.

9 That was the situation at the time of the submission
10 of Ukraine's claim in 2016. On 30 September 2022,
11 following the referendums held in the DPR, the LPR, the
12 Zaporozhye region and the Kherson region, these areas
13 became part of the sovereign territory of the Russian
14 Federation pursuant to the Treaties on Accession of the
15 same date. Since this accession, Ukraine ceased to be
16 a coastal State concerning the Sea of Azov. Therefore,
17 the conclusions that this Tribunal reached in the 2020
18 Award about lacking jurisdiction over the matters that
19 require the Tribunal to decide on the sovereignty over
20 Crimea are fully applicable to the present situation
21 with the DPR, the Zaporozhye and Kherson regions.

22 Consequently, Ukraine's assertions that Russia
23 allegedly interferes with navigation in the Kerch Strait
24 and the Sea of Azov are without merit. Besides the lack
25 of jurisdiction over these claims, they are simply

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1 wrong. As the Kerch Strait is not an international
2 strait within the meaning of the Convention, provisions
3 on transit passage do not apply.

4 The construction of the Crimean Bridge, which is
5 also contested by Ukraine, was made necessary by
6 Ukraine's own deplorable policy of "starving out" the
7 Crimean population by cutting it off from all vital
8 supplies. Previously, before the coup in Kiev, Ukraine
9 itself had recognised the need for a crossing over the
10 Kerch Strait.

11 Ukraine also exaggerates the supposedly negative
12 effects of the bridge construction on navigation in the
13 strait. The bridge clearance -- the main target of
14 Ukraine's criticism -- reflects the reality of the
15 navigation of various types of vessels in the strait,
16 and cargo turnover, which has always been limited and
17 has actually increased after the bridge was constructed.

18 The construction of the bridge was a major
19 infrastructure project based on extensive studies,
20 including multiple possible design options, estimation
21 of any possible environmental impact and the like.

22 Ukraine also erroneously treats Russia's traffic
23 regulations in the Kerch Strait as wrongful interference
24 with navigation. Our counsel will expound that these
25 assertions are not based on fact and law. The

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1 regulations, such as a permit-based system, pilotage
2 requirement and one-way traffic in the Kerch-Yenikale
3 Channel, were introduced to ensure the safety of
4 navigation and mitigate the risks of accidents. Such
5 navigation control measures are nothing out of the
6 ordinary and are commonplace in other straits around the
7 world.

8 Ukraine further accuses Russia of discriminatingly
9 inspecting vessels transiting through the Kerch Strait
10 and the Sea of Azov. Besides the fact that inspections
11 are a sovereign right and as such are outside the scope
12 of the present arbitration, such practice is in any
13 event neither unlawful nor even novel. Both the
14 Russian Federation and Ukraine conducted such
15 inspections prior to 2014.

16 As the security situation around Crimea and the
17 Kerch Strait deteriorated, due to Ukraine's own hostile
18 actions, Russia had every legitimate reason to conduct
19 inspections in order to ensure national security and
20 prevent claims, including the threats from the Ukrainian
21 authorities to blow up the bridge.

22 Apart from the accusations mentioned earlier,
23 Ukraine is also targeting Russia's policies and measures
24 aimed at the protection and preservation of the marine
25 environment of the Azov-Black Sea Basin during the

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1 construction and subsequent operation of the Kerch
2 Strait Bridge and related projects. As a matter of
3 fact, Russia has fully complied with all of its
4 obligations and relevant standards in this regard, and
5 continues to do so now, as there is an active
6 environmental monitoring programme in place in the area.

7 On the contrary, it is Ukraine that is not truly
8 concerned about the environment, judging by the relief
9 sought: radical reconstruction or even destruction of
10 the bridge. Imagine the harm to the marine environment
11 that this so-called "relief" would entail.

12 Distinguished members of the Tribunal, this sort of
13 relief cannot be taken seriously.

14 The recent bombings of the Crimean Bridge, devised,
15 carried out and ordered by the Ukrainian Government,
16 prove that the marine environment protection is far from
17 Ukraine's concerns.

18 And finally, Ukraine has not specified a single
19 instance of harm that actually occurred in the Sea of
20 Azov and the Kerch Strait due to the construction of the
21 bridge. This is quite telling.

22 Ukraine also absurdly accuses Russia of "cultural
23 erasure", while referring only to four minor isolated
24 episodes, which were actually scientific expeditions
25 conducted by professional archaeologists aimed at

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1 preserving and rescuing valuable historical artifacts.
2 These expeditions have, in fact, enriched scientific
3 knowledge and prompted further research.

4 Russia's legislation, policies and control measures
5 for the protection of underwater culture heritage
6 encompass international archaeological standards. The
7 framework that the Russian Federation enacted and
8 developed ensures the appropriate level of protection
9 for such objects. It also proves that, contrary to
10 Ukraine's baseless assertions, the relevant protection
11 standards were duly respected in all archaeological
12 episodes that Ukraine singled out.

13 Overall, Ukraine's entire case is nothing but
14 hypocrisy. While brazenly accusing Russia of
15 aggravating the dispute, Ukraine has launched numerous
16 military and terrorist attacks at the bridge. While
17 accusing Russia of non-compliance with its environmental
18 obligations under UNCLOS, Ukraine itself is notoriously
19 known for its disregard for ecology. Specifically,
20 Ukraine's attacks against the bridge and its other
21 military activities in the area may cause severe damage
22 to the marine environment: as the recent attack on
23 fuel-carrying ships, which created a risk of fuel
24 spilling into the sea.

25 While attacking Russia for alleged "cultural

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1 erasure" without any valid jurisdiction, Ukraine itself
2 is well known for having one of the most developed
3 markets for "black archaeology". After Crimea acceded
4 to the Russian Federation, Russia had to conduct
5 numerous rescue operations to save archaeological
6 objects which Ukraine did nothing to protect.

7 Representing these and other legal arguments in more
8 depth and detail shall be done by our legal team present
9 in this room.

10 Mr President, honourable members of the Tribunal,
11 I once again urge you not to fall for Ukraine's badly
12 conceived, ill-founded and, I'd say, desperate attempts
13 to obtain some sort of inference on the contested
14 situation between itself and the Russian Federation. As
15 will be demonstrated by Russia's counsel, all of
16 Ukraine's claims are baseless, fall outside of the scope
17 of your jurisdiction and should be dismissed in their
18 entirety.

19 I thank you for your kind attention.

20 THE PRESIDENT: Thank you, Mr Kuzmin.

21 The live transmission of today's hearing will now
22 conclude. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]