

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 9
Evidentiary Hearing

Thursday, 3 October 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

17:17

1 (5.40 pm)

2 THE PRESIDENT: We will continue the hearing. I now invite
3 the Co-Agent for Ukraine, Ms Oksana Zolotaryova, to make
4 the concluding remarks of Ukraine in these proceedings.

5 Closing Statement

6 MS ZOLOTARYOVA: Thank you.

7 Mr President, distinguished members of the Tribunal,
8 it is an honour to appear before you on behalf of
9 Ukraine.

10 In these challenging times, it can be difficult to
11 put faith in international law. Ukraine is a country at
12 war: a war that we fight to preserve our independence,
13 but a war we did not ask for. Still, even in these
14 challenging times, Ukraine will not abandon the law.
15 Ukraine remains committed to the peaceful settlement of
16 disputes, even while we fight for our country on the
17 battlefield.

18 This case is about Russia's past violations of the
19 UN Convention on the Law of the Sea. It is about
20 Russia's illegal bridge over the Kerch Strait, about its
21 harassment of vessels bound for Ukrainian ports, about
22 its neglect of its obligations of environmental
23 protection and its disrespect for underwater cultural
24 heritage. But this case is also about Ukraine's future.

25 Today, the cities of Kherson and Zaporizhzhia are

17:42

1 flying the Ukrainian flag. There will be a day, and in
2 the not-too-distant future, when Mariupol and Berdyansk
3 will fly the Ukrainian flag once again; when Ukraine's
4 industrial economy in the east once again will load
5 cargo ships in Berdyansk and Mariupol with Azovstal
6 steel and other industrial goods from Ukraine. These
7 ports on the Sea of Azov shall rise again to play
8 an important role in our economy and they will be used
9 again to supply grain to the whole world, especially to
10 the Global South.

11 This is another reason that we are here before you.
12 This case not only seeks redress for Russia's past
13 violations of UNCLOS, but it ensures Ukraine's future,
14 where we will continue to dispatch cargo ships, fishing
15 fleets and government and naval vessels through the
16 international waters of the Sea of Azov and
17 Kerch Strait, and on into the Black Sea and the world's
18 oceans.

19 Russia wants to steal this future. But UNCLOS
20 defends this future for Ukraine. UNCLOS demands that
21 international waters are respected; that passage through
22 the Kerch Strait is not impeded; that the ships of all
23 nations are free to navigate in the waters of the
24 Sea of Azov without fear of Russian stoppages and
25 harassment; that the marine environment -- the Azov

17:43

1 anchovies and dolphins and the rest of the delicate
2 ecosystem of the Black Sea Basin -- remains protected;
3 that the cultural heritage of all mankind lying on the
4 ocean floor is preserved.

5 Mr President, members of the Tribunal, I also feel
6 compelled to comment on Russia's statement that the
7 so-called Kerch Bridge is a humanitarian effort. We
8 must recall that it was Russia that sent its military
9 into Crimea and occupied Ukraine's territory; it was
10 Russia that cut off the Crimean Peninsula from mainland
11 Ukraine, and thus severed hundreds of thousands of
12 family connections, deprived the civil population of
13 Crimea of their future and established a gruesome zone
14 of despair.

15 It is ironic, indeed cynical, to hear Russia stand
16 before this respected Tribunal and argue that somehow
17 the plight of many Ukrainians in Crimea is the fault of
18 anyone other than Russia itself. Russia talks about the
19 so-called Kerch Bridge being necessary because of
20 a so-called "blockade". But the real blockade, which is
21 not the one before this Tribunal, was Russia's blockade
22 of Ukrainian ports in 2022 that caused a global food
23 crisis.

24 Russia's bridge has many nefarious uses. One of
25 them is to physically turn the Sea of Azov into what

17:45

1 Russia wants it to be: a closed Russian lake. This is
2 why Russia tries so hard to argue in this forum that the
3 bridge is lawful. In fact, when Russia first decided to
4 build this bridge in 2014, when Russia completed this
5 bridge in 2017, it was violating the UN Convention on
6 the Law of the Sea by building the lowest clearance
7 bridge over an international strait in the world.

8 Mr President, members of the Tribunal, I must pause
9 to recall that while I and my delegation have been
10 sitting in this room for the last [ten] days, the war at
11 home continues. Indeed, for the last two and a half
12 years, Russian bombs, missiles and drones have dropped
13 on Ukrainian cities and villages, including Kherson and
14 Zaporizhzhia and my hometown, Kharkiv. They have
15 dropped on the port city of Odesa, a critical port for
16 Ukraine's exports. And today, this fighting continues
17 in eastern and southern Ukraine.

18 But while war is ever in the background, we are here
19 in The Hague to focus on Russia's violations of the law
20 of the sea.

21 Mr President, members of the Tribunal, we learned
22 many things this week.

23 We learned that Russia knew, without any doubt, that
24 the Kerch Strait Bridge would prevent large cargo
25 vessels, including Panamax and Handysize vessels, from

17:46

1 reaching Mariupol and Berdyansk. But it chose to build
2 the bridge anyway.

3 We learned that a Russian government agency provided
4 Russia's experts with flawed data -- data that the
5 experts did not check -- to pretend that the harm to the
6 ports of Mariupol and Berdyansk was economically
7 unimportant.

8 We learned that there is not a single officer in
9 Russia's Navy and Border Service who will deny before
10 this Tribunal that, even before Russia's full-scale
11 invasion in 2022, the Russian Federation engaged in
12 a discriminatory campaign of stoppages and inspections
13 against vessels from all flagged states transiting to
14 Mariupol and Berdyansk, causing to them enormous
15 economic damages.

16 We learned that Russia believes that its violation
17 of one treaty by expropriating the assets of Naftogaz
18 should insulate it from being held accountable for
19 a violation of Ukraine's flag State rights when it
20 seized and re-flagged the vessels of Tavrida and Sivash.

21 We learned that Russia hurriedly poured tonnes of
22 concrete into the Kerch Strait to build its bridge,
23 without undertaking adequate assessments of the
24 anticipated environmental impacts.

25 We learned that Russia failed to publish, and

17:48

1 continues to withhold, environmental assessment and
2 monitoring information concerning the Kerch Strait
3 construction projects, concealing the true environmental
4 impact of these projects from Ukraine, from this
5 Tribunal and from the whole world.

6 We learned that archaeologists in Russia have
7 carte blanche when it comes to deciding whether or not
8 to excavate invaluable cultural heritage objects. This
9 common heritage of mankind is treated as trophies of the
10 Russian Federation alone.

11 We learned that while touting in public its respect
12 for World War II, behind closed doors, Russian lawyers
13 will deny that the artefacts of that war benefit from
14 the protection accorded to older historical objects.

15 And perhaps most importantly, we confirmed what we
16 always knew: Russia cannot justify its actions by
17 relying on the United Nations Convention on the Law of
18 the Sea. It can do so only by insisting that the
19 Sea of Azov should be treated like a Russian lake,
20 governed by the same laws and rules as canals and small
21 rivers, and by disregarding international law in
22 general, and UNCLOS in particular.

23 Mr President, members of the Tribunal, if you grant
24 Russia sovereignty over the Sea of Azov, I have no doubt
25 that Russia will abuse that sovereignty to the detriment

17:49

1 of its neighbours.

2 By ratifying UNCLOS, Russia agreed to abide by the
3 rules of the law of the sea. As these past two weeks
4 have demonstrated, Russia has trampled on that
5 commitment in the service of its own interests, ignoring
6 its international legal obligations to respect
7 navigation, protect the marine environment, and preserve
8 underwater cultural heritage. As my colleague
9 Ambassador Korynevych noted at the outset of these
10 proceedings (Day1/21:8-11):

11 "Russia illegally takes what it wants, rewrites
12 international law to its liking, and then demands that
13 tribunals like this one accept what it says, as it has
14 always done."

15 We ask this Tribunal to tell Russia that "enough is
16 enough". We ask that you give meaning to the Law of the
17 Sea Convention. We ask that you uphold the legal rules
18 of the world oceans that were drafted to protect the
19 common interests of all humankind.

20 We also have specific requests. It is not enough to
21 tell Russia that it violates international law: Russia
22 must be ordered to provide assurances that it will not
23 repeat its violations in the future; Russia must be
24 ordered to stop its unlawful conduct; Russia must be
25 ordered to wipe out the consequences of its illegal acts

17:51

1 by releasing and deregistering the Ukrainian drilling
2 rigs that it has unlawfully seized and re-flagged;
3 Russia must be ordered to conduct proper studies on the
4 impact of Russia's construction projects in the
5 Kerch Strait on the marine environment; and Russia must
6 be ordered to take steps to remediate the environmental
7 damage caused by this project, and to actively manage
8 continuing risks of environmental harm.

9 There is a final remedy that is of utmost importance
10 for the future of the Sea of Azov, Kerch Strait and the
11 Black Sea: the Tribunal must order Russia to dismantle
12 and remove the so-called Kerch Bridge. Dismantling
13 the bridge is the only way to restore passage for the
14 vessels of all countries who used the strait in the
15 past, and the vessels that are anticipated to use the
16 strait in the future. It is Russia that unlawfully
17 built this bridge, and now it needs to remove it, to
18 enable passage through the Kerch Strait, consistent with
19 international law. Russia should do so in conformity
20 with its other UNCLOS obligations to protect the marine
21 environment and underwater cultural heritage.

22 Finally, recognising the importance of these
23 remedies to Ukraine and all States Parties to UNCLOS,
24 Ukraine further requests that the Tribunal remain in
25 place for 24 months after its final award in order to be

17:52

1 able to respond to requests concerning implementation.
2 This last issue is very important so your final award
3 will play an important role in the development and
4 protection of the law of the sea.

5 Mr President, members of the Tribunal, Ukraine
6 envisions a better future, where the constitution of the
7 oceans that governs the Sea of Azov and Kerch Strait is
8 enforced as the drafters of UNCLOS intended. We hope
9 the Tribunal will take the important step towards
10 securing the future of Ukraine and this vibrant maritime
11 region; to secure the future global ports that conduct
12 international commerce guided by the core principles of
13 free navigation and transit passage of grain, steel and
14 commodities through open international straits; to
15 ensure a future where the common heritage of
16 humankind -- the marine environment and priceless
17 underwater cultural heritage -- are protected for future
18 generations.

19 On behalf of Ukraine, allow me to thank the
20 Permanent Court of Arbitration for its assistance.
21 I thank the interpreters and the staff of the PCA for
22 their professionalism during these proceedings. And
23 finally, Mr President, distinguished members of the
24 Tribunal, I thank you for your attention in this
25 important matter for Ukraine and for the whole world.

17:54

1 This concludes the oral arguments of Ukraine at
2 these hearings. Thank you.

3 THE PRESIDENT: Thank you, Ms Oksana Zolotaryova, for your
4 statement. The live transmission of today's hearing
5 will now stop.

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