

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 10
Evidentiary Hearing

Saturday, 5 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

[REDACTED]

12 (5.40 pm)

13 THE PRESIDENT: We will continue the hearing. I now invite the
14 Agent for the Russian Federation, Mr Gennady Kuzmin, to
15 make the concluding statement of the Russian Federation.

16 Closing Statement

17 H.E. MR KUZMIN: Thank you, Mr President.

18 Mr President, distinguished members of the Tribunal,
19 it is my honour to present the closing statement of the
20 Russian Federation.

21 You have just heard the final arguments of the
22 Russian Federation. Over the weeks, you have heard the
23 testimony of Russia's experts and witnesses. All of it
24 points towards the only truth: Ukraine's claims are
25 without any ground and must be dismissed in their

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1 entirety.

2 No surprise, no miracle. Ukraine has already failed
3 to prove its outrageous claims in the International
4 Court of Justice. It turns out that rhetoric, bluster
5 and trumped-up charges are a poor substitute for legal
6 arguments and solid factual data.

7 Ukraine came to you trying to overturn one of the
8 most long-standing maritime regimes on the planet:
9 the status of the Sea of Azov and the Kerch Strait.

10 During the hearings, Russia has conclusively shown
11 that the Sea of Azov and the Kerch Strait have
12 historically constituted internal waters and have never
13 been subject to the UNCLOS. The historic title was
14 continuous and uncontested. It started back in 1783 and
15 is still valid: almost 250 years, as long as the
16 United States of America [has] exist[ed].

17 This status quo was confirmed by the
18 UN Secretariat's authoritative Memorandum on Historic
19 Bays, which listed the Sea of Azov as the very first
20 example of a historic bay. Multiple esteemed scholars
21 also saw these areas as historically constituting
22 internal waters. Ukraine itself stood firm on that,
23 including in its binding treaties: the 2003 Border
24 Treaty and the Azov/Kerch Cooperation Treaty between
25 Russia and Ukraine.

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1 The same historical internal waters status is
2 confirmed by dozen of statements by Ukrainian officials,
3 including the legitimate President of Ukraine.

4 This same again is confirmed by long-standing
5 practice of third States, which have always treated the
6 Sea of Azov and the Kerch Strait as internal waters,
7 both before and after the dissolution of the
8 Soviet Union. Nobody [ever] challenged this regime.

9 Historic internal water status of the Sea of Azov
10 and Kerch Strait precludes the jurisdiction of this
11 Tribunal over any dispute concerning them. Both Ukraine
12 and Russia made declarations to UNCLOS excluding
13 jurisdiction with regard to historic waters, and the
14 Convention does not regulate internal waters at all,
15 except residually.

16 Nowadays, Ukraine appeared before you to prove that
17 the status of the Sea of Azov and the Kerch Strait as
18 internal waters somehow vanished upon the dissolution of
19 the Soviet Union. However, and fatally for Ukraine,
20 this is directly contrary to Ukraine's own laws,
21 treaties and actions from its very inception as
22 an independent State.

23 Ukraine declared sovereignty over its post-Soviet
24 territory. Ukraine entered treaties of 2003. Ukraine
25 deposited to the United Nations coordinates for

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1 baselines to delineate its waters; and as we have shown
2 to you today, these baselines provided for internal
3 water status. Up to 2014, Ukraine controlled navigation
4 in the Kerch Strait, without ever considering that third
5 States have a right of free passage through the strait.
6 Does it mean Ukraine was violating UNCLOS for almost
7 30 years by illegally imposing Ukrainian sovereignty
8 over so-called "international waters"?

9 The natural consequence of State succession is that
10 waters that were previously internal for the predecessor
11 State remain internal, with joint ownership by successor
12 or continuator States. Such, for example, was the case
13 for the Bay of Piran, according to a recent arbitral
14 decision. The principle of joint ownership was
15 supported by international courts, including the ICJ,
16 since 1917.

17 Mr President, as UNCLOS is inapplicable to the
18 Sea of Azov and the Kerch Strait, the regime of transit
19 passage cannot be applied to the Kerch Strait. In light
20 of this, all of Ukraine's claims regarding freedom of
21 navigation and transit passage in the strait should be
22 dismissed. However, for the sake of completeness,
23 Russia has debunked these claims on the merits as well.

24 First, Ukraine paints a picture that the
25 Crimean Bridge is "too low". The bridge's 35-metre

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1 height allegedly did not allow passage of large cargo
2 vessels, and thus, according to Ukraine, strangled the
3 Ukrainian maritime economy.

4 In fact, both Russia and Ukraine recognised the need
5 for construction of a crossing over the strait long ago,
6 and even concluded an agreement in this respect in 2013.
7 However, following the armed coup in Ukraine and
8 reunification of Crimea with Russia, Ukraine made
9 a U-turn, denounced the agreement, and started to
10 aggressively oppose any construction activities in the
11 strait.

12 Mr President, members of the Tribunal, this
13 "impediment to navigation" claim is just a pretext.
14 Ukraine simply cannot stand the very idea of this bridge
15 as a symbol of Crimea's reunification with Russia.

16 In fact, Ukraine itself contributed to the swift
17 construction of the bridge: the need to alleviate the
18 catastrophic effects of Ukraine's atrocious blockade of
19 the Crimean Peninsula is one of the reasons why the
20 project was realised so urgently. We care about our
21 2 million people of Crimea; Ukraine does not. In short,
22 the bridge, as well as the gas pipeline and power
23 cables, had to be built.

24 Ukraine failed to demonstrate how its economic
25 interests were actually harmed by the bridge's

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1 construction, and its clearance in particular. Just to
2 give you one example, the number of vessels transiting
3 the strait almost reached 30,000 in 2020, a record
4 figure for this waterway in comparison to previous
5 Ukrainian years.

6 Ukraine further takes issue with the navigational
7 requirements on the Kerch Strait introduced by the
8 Russian Federation: an obligation to take on a pilot to
9 transit the strait, and the one-way traffic in the
10 vicinity of the bridge. It is surprising to see how
11 Ukraine endeavours to present these common navigational
12 rules as something out of the ordinary. Ukraine itself
13 had similar regulations in force before 2014, but of
14 course saw them as perfectly adequate.

15 Of course, inspections of vessels is a sovereign
16 right in internal waters, and Ukraine again glosses over
17 the fact that prior to 2014, it conducted its own
18 inspections in the Kerch Strait and the Sea of Azov, and
19 did not consider them an impediment to navigation.
20 Obviously the Russian Federation cannot be deprived of
21 its sovereign rights, arbitral award or not.

22 During these hearings, Russia has demonstrated that
23 it has fully honoured the environmental commitments
24 under UNCLOS. It made full and appropriate
25 environmental impact assessments, monitored possible

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1 impacts, and took every necessary step to make this
2 process transparent and cooperative. Ukraine's
3 protestations throughout the proceedings came down to
4 nitpicking.

5 Ukraine attempted to rely on experts who have no
6 firsthand knowledge of the region and base their
7 findings on media articles and multiple use of "likely",
8 "may" and "possible". Unable to provide actual
9 evidence, Ukraine claims about potential long-term
10 effects. Almost eight years have passed since the
11 construction of the bridge began, but no damage to the
12 environment has materialised. Neither Ukraine nor its
13 experts managed to provide any evidence in support of
14 their accusations.

15 Another absurd accusation relates to UCH. This is
16 not for the first time that Ukraine falsely accuses
17 Russia of destruction of cultural heritage in Crimea.
18 In the ICJ case under the Convention on Elimination of
19 All Forms of Racial Discrimination, Ukraine accused
20 Russia of conducting a campaign aimed at degradation of
21 cultural heritage of Ukrainians and Crimean Tatars.
22 Those allegations were not supported by evidence and
23 [were] dismissed by the Court earlier this year.

24 This case is exactly the same: big words, but no
25 substance. Ukraine made no meaningful attempt to

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1 challenge the methodology used during the excavations;
2 it brought no witness statement or expert report to
3 support its allegations.

4 Russia does take all necessary measures to ensure
5 protection for all cultural heritage that may be found
6 under its jurisdiction.

7 Mr President, respected members of the Tribunal, on
8 Thursday, the Ukrainian Co-Agent said (Day9/186:1-2):

9 "There will be a day ... when Mariupol and Berdyansk
10 will fly the Ukrainian flag once again ..."

11 Let me respond. There will be a day when Ukraine
12 will become a friendly State. The people of Ukraine
13 will wake up from mass psychosis and ask: who are those
14 who decided on behalf of the people of Ukraine to
15 surrender its sovereign rights, to reconfigure law and
16 reality, breaking up ancient legal order, to destroy the
17 vital infrastructure which served long-term interests of
18 people of the region?

19 We know various court and arbitral determinations.
20 Some of them survived the centuries; others ended in
21 oblivion in less than no time. Arbitral award should be
22 a road to peace. And this is the essence of the
23 arbitration. Change of status of the Kerch Strait and
24 Azov Sea under short-term political needs is a road to
25 nowhere.

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1 Therefore, the Russian Federation respectfully
2 requests the Arbitral Tribunal to find that all of
3 Ukraine's claims are outside of the Arbitral Tribunal's
4 jurisdiction and/or are inadmissible; or, in the
5 alternative, to dismiss all Ukraine's claims and prayers
6 for relief in their entirety.

7 Mr President, distinguished members of the Tribunal,
8 this concludes the second round of oral arguments of the
9 Russian Federation. I would like to thank you for your
10 attention during these two hard weeks, and also express
11 gratitude to the interpreters, the Registrar, as well as
12 other members of the staff of the Permanent Court of
13 Arbitration, for their invaluable assistance during
14 these hearings and in the course of these proceedings.

15 I thank you.

16 THE PRESIDENT: Thank you, Mr Kuzmin, for your statement.

17 The live transmission of today's hearing will now
18 end.

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