

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**

PROCEDURAL ORDER NO. 1

ARBITRAL TRIBUNAL:

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

REGISTRY:

The Permanent Court of Arbitration

WHEREAS Ukraine and the Russian Federation are parties to the 1982 United Nations Convention on the Law of the Sea (“**UNCLOS**” or the “**Convention**”);

WHEREAS Article 286 of the Convention provides that “[s]ubject to section 3 [of Part XV], any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1 [of Part XV], be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section”;

WHEREAS upon ratification of the Convention on 26 July 1999, Ukraine made a declaration pursuant to Article 287 of the Convention accepting the jurisdiction of an arbitral tribunal constituted in accordance with Annex VII to the Convention, subject to certain reservations;

WHEREAS upon signing of the Convention on 10 December 1982, to which the Russian Federation is a Party as the State continuing the legal personality of the Union of Soviet Socialist Republics, the Union of Soviet Socialist Republics made a declaration pursuant to Article 287 of the Convention accepting the jurisdiction of an arbitral tribunal constituted in accordance with Annex VII to the Convention, subject to certain reservations;

WHEREAS Article 1 of Annex VII to the Convention provides that “[s]ubject to the provisions of Part XV, any Party to a dispute may submit the dispute to the arbitral procedure provided for in this Annex by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of claim and the grounds on which it is based”;

WHEREAS Ukraine has invoked Article 287 of the Convention and Article 1 of Annex VII to the Convention in serving upon the Russian Federation a “Notification under Article 287 and Annex VII, Article 1 of UNCLOS and Statement of Claim and Grounds on which it is Based” dated 31 March 2019 referring to a “dispute concerning the immunity of three Ukrainian naval vessels and the twenty-four servicemen on board”;

WHEREAS Article 4 of Annex VII to the Convention provides that “[a]n arbitral tribunal constituted under article 3 of this Annex shall function in accordance with this Annex and the other provisions of this Convention”;

WHEREAS Article 5 of Annex VII to the Convention provides that “[u]nless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedure, assuring to each party a full opportunity to be heard and to present its case”;

WHEREAS on 21 November 2019, a procedural meeting with the Parties was held at the premises of the Permanent Court of Arbitration (“**PCA**”) at the Peace Palace in The Hague at which the procedure and timetable to be adopted for the arbitration were discussed;

WHEREAS at the procedural meeting, the Parties agreed that, consistent with Articles 4 and 5 of Annex VII to the Convention, the Arbitral Tribunal has the authority to adopt its Terms of Appointment and the Parties agreed to the Terms of Appointment;

THE ARBITRAL TRIBUNAL HEREBY ORDERS:

Terms of Appointment and Rules of Procedure

1. The Arbitral Tribunal adopts the Terms of Appointment annexed to the present order.
2. The arbitration shall be conducted in accordance with the Rules of Procedure annexed to the present order.

Timetable for the Arbitration

3. No later than six months from the date of this Procedural Order, Ukraine shall submit its Memorial.
4. If no Preliminary Objection is raised by the Russian Federation, the Russian Federation shall submit a Counter-Memorial no later than six months from the date of filing of the Memorial. The Arbitral Tribunal shall, after ascertaining the views of the Parties, decide on the subsequent proceedings and the further timetable.
5. In the event that the Russian Federation wishes to raise one or more Preliminary Objections and request to have them addressed in a preliminary phase, it shall submit its Preliminary Objections and request by no later than three months from the date of filing of the Memorial, and the timetable for further submissions shall be as follows:
 - (a) No later than 14 days from the date of filing of the Preliminary Objection(s) of the Russian Federation, Ukraine may submit any views on whether the Preliminary Objection(s) should be addressed in a preliminary phase.
 - (b) In the event of Ukraine agreeing that such Preliminary Objection(s) should be addressed in a preliminary phase, Ukraine shall submit its written response to the Preliminary Objection(s) no later than three months from the date of filing of the Preliminary Objection(s). A Hearing on Preliminary Objections shall then be held on dates to be fixed, after ascertaining the views of the Parties, by the Arbitral Tribunal.
 - (c) In the event of Ukraine contending that such Preliminary Objection(s) should not be addressed in a preliminary phase, the Russian Federation may, no later than 14 days from the date of filing of the views of Ukraine, submit its comments on the response of Ukraine.
 - (d) No later than seven days from the date of filing of the comments of the Russian Federation, Ukraine may submit its response to the comments of the Russian Federation.
 - (e) The Arbitral Tribunal shall thereafter rule on whether the Preliminary Objection(s) of the Russian Federation shall be addressed in a preliminary phase.
 - (f) In the event that the Arbitral Tribunal rules that one or more Preliminary Objections shall be addressed in a preliminary phase, Ukraine shall submit its written response to the Preliminary Objection(s) no later than three months from the date of the ruling of the Arbitral Tribunal. A Hearing on Preliminary Objections shall then be held on dates to be fixed, after ascertaining the views of the Parties, by the Arbitral Tribunal.
 - (g) In the event that the Arbitral Tribunal rules that the Preliminary Objection(s) shall not be addressed in a preliminary phase, the Russian Federation shall submit its Counter-Memorial no later than six months from the date of the ruling of the Arbitral Tribunal. The

Arbitral Tribunal shall, after ascertaining the views of the Parties, decide on the subsequent proceedings and the further timetable.

6. In the event that the Russian Federation submits a counter-claim with its Counter-Memorial, the Arbitral Tribunal shall, after ascertaining the views of the Parties, decide on the subsequent proceedings and the further timetable.

Dated: 22 November 2019

ON BEHALF OF THE ARBITRAL TRIBUNAL



Professor Donald McRae
President