



CONTRIBUTION OF THE PERMANENT COURT OF ARBITRATION TO THE REPORT  
OF THE SECRETARY-GENERAL ON OCEANS AND THE LAW OF THE SEA  
AS AT 22 JUNE 2016

---



discourse. The International Bureau has its headquarters at the Peace Palace in The Hague, the Netherlands. It also has a Mauritius office and has concluded Host Country Agreements with a number of its member States and cooperation arrangements with many arbitral institutions across the globe, enabling it to organize hearings and other activities in those jurisdictions under similar conditions as in the Netherlands.

More information on the PCA, including its 2015 Annual Report, is available at [www.pca-cpa.org](http://www.pca-cpa.org)

#### C. THE PCA AND THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The Convention sets forth in Part XVI the means for the resolution of disputes between States arising out of its interpretation or application. Pursuant to Article 287 of the Convention, arbitration under Annex VII is the default means of dispute settlement if a State has not expressed any preference with respect to the means of dispute resolution available under Article 287(1) of the Convention. If the

12. The MOX Plant Case Ireland v. United Kingdom, PCA Case No 2001-03, which was instituted in November 2001 and terminated through a tribunal order issued on 6 June 2008.

The Annex VII arbitrations relevant to the reporting period for the United Nations Secretary-General's 2016 report on oceans and the law of the sea are discussed in 2ed i

The Republic of Croatia and the Republic of Slovenia jointly instituted these proceedings concerning their territorial and maritime dispute.

Article 3(1) of the Parties' arbitration agreement states: "The Arbitral Tribunal shall determine (a) the course of the maritime and land boundary between the Republic of Slovenia and the Republic of Croatia; (b) Slovenia's junction to the High Sea; (c) the regime for the use of the relevant maritime areas." Article 4 of the agreement states: "The Arbitral Tribunal shall apply (a) rules and principles of international law for the determinations referred to in Article 3(1)(a); (b) international law, equity and the principle of good neighbourly relations in order to achieve a fair and just result by taking into account all relevant circumstances for the determinations referred to in Article 3(1)(b) and (c)."

The first procedural meeting was held on April 2012, following which the Parties submitted their respective Memorials on 11 February 2013, Counter-Memorials on 11 November 2013, and Reply Memorials on 26 March 2014. The pleadings included nearly 1,500 documentary exhibits and legal authorities, as well as over 250 figures and maps. A week hearing at the Peace Palace in The Hague was held in June 2014; a summary of the Parties' respective oral arguments is available at [http://www.pca-cas.com/web/StaticContent/241\(c\).1\)2.3 ET .1\(c\).4.135 0 Td \( \)Tj e 187\(u e\)44 re f \[\(ht/wS1.8\(d](http://www.pca-cas.com/web/StaticContent/241(c).1)2.3 ET .1(c).4.135 0 Td ( )Tj e 187(u e)44 re f [(ht/wS1.8(d)

On 19 February 2013, China rejected and returned the Philippines' Notification and Statement of Claim and has maintained a position of non-acceptance and non-participation in the arbitration.

On 27 August 2013, the Arbitral Tribunal adopted its Rules of Procedure and noted that pursuant to Article 9 of Annex VII to the Convention, the absence of a party or failure of a party to defend its case does not constitute a bar to the proceedings. In such circumstances, before making its award, the Arbitral Tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law. In accordance with the Rules of Procedure, on 16 December 2014, the Arbitral Tribunal took note of the fact that China had not submitted a Memorial and requested further written argument from the Philippines on certain issues raised in the Philippines' Memorial. The Philippines filed a Supplemental Written Submission in response on 16 March 2015.

On 7 December 2014, China published a "Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines" in which it set out its view that the Arbitral Tribunal lacks jurisdiction to consider the submissions of the Philippines. China, however, stated that the Position Paper shall not be regarded as China's acceptance of or its participation in the arbitration. The Arbitral Tribunal decided to treat China's Position Paper and other communications from China as constituting a plea concerning the Arbitral Tribunal's jurisdiction.

From 7 to 13 July 2015, the Arbitral Tribunal convened a hearing on the scope of its jurisdiction and the admissibility of the Philippines' claims. It rendered a unanimous Award on Jurisdiction and Admissibility on 29 October 2015. The Arbitral Tribunal held that, in accordance with Article 9 of Annex VII to the Convention, China's decision not to participate in the proceedings does not deprive the Arbitral Tribunal of jurisdiction. The Arbitral Tribunal did not consider there to be any indispensable third party absent from the proceedings. The Arbitral Tribunal held that the Philippines' decision to commence arbitration unilaterally was not an abuse of the Convention's dispute settlement procedure. The Arbitral Tribunal held that the 2002 China-ASEAN Declaration on Conduct of the Parties in the South China Sea, the joint statements of the Parties, the Treaty of Amity and Cooperation in Southeast Asia, and the Convention on Biological Diversity do not preclude, under Articles 281 or 282, recourse to the compulsory dispute settlement procedures under the Convention. Furthermore, the Arbitral Tribunal found that the Parties have exchanged views as required by Article 283 of the Convention.

The Arbitral Tribunal rejected the arguments set out in China's Position Paper that the Parties' dispute is actually about sovereignty over the islands in the South China Sea and the delimitation of a maritime boundary and therefore beyond the Arbitral Tribunal's jurisdiction. On the contrary, the Arbitral Tribunal held that each of the Philippines' Submissions reflects disputes between the two States concerning the interpretation or application of the Convention. The Arbitral Tribunal decided that it does have jurisdiction with respect to the matters raised in seven of the Philippines' Submissions. However, the Arbitral Tribunal concluded that the remaining Submissions involved issues that do not possess an exclusively preliminary character and accordingly reserved its decision on jurisdiction on those Submissions to be considered in conjunction with issues on the merits. It also requested the Philippines to clarify and narrow one of its Submissions.

From 24 to 30 November 2015, the Arbitral Tribunal held a hearing on the merits and remaining issues.

included: (i) that China is not entitled to exercise what it refers to as historic rights over the waters, seabed and subsoil beyond the limits of its entitlements under the Convention; (ii) that the so-called 'nine-dash line' has no basis under international law insofar as it purports to define the limits of China's claim to historic rights; (iii) that none of the various maritime features relied upon by China as a basis upon which to assert its claims in the South China Sea are capable of generating entitlements beyond 12 miles, and some generate no entitlements at all; (iv) that China has breached the Convention by interfering with the Philippines' exercise of its sovereignty and jurisdiction; and (v) that China has damaged the marine environment, in breach of the Convention. In the course of the hearing, members of the Arbitral Tribunal posed questions to the Philippines' counsel in respect of many aspects of their claims, and the Arbitral Tribunal also heard testimony from the Philippines' expert witnesses on the status of features in the South China Sea and on the environmental effects of China's island building, and of activities carried out by Chinese fishing vessels. At the close of the hearing, the Arbitral Tribunal stated that it intends to issue its Award on the Merits in 2016.

iii. Arctic Sunrise Arbitration (Netherlands v. Russia), PCA Case No. 2013-02

Commencement date	4 October 2013
Jurisdictional basis	Article 287 and Annex VII to the Convention
Tribunal members	Judge Thomas A. Mensah (President), Mr. Henry Burmester Prof. Alfred H.A. Soons, Prof. Janusz Symonides, Dr. Alberto Székely
Status	Ongoing
Further information	<a href="https://pcacases.com/web/view/21">https://pcacases.com/web/view/21</a>

The Kingdom of the Netherlands instituted these proceedings on 4 October 2013 with respect to a dispute concerning the boarding and detention of the vessel Arctic Sunrise in the exclusive economic zone of the Russian Federation, and the detention of the persons on board the vessel by the Russian authorities.

Prior to the constitution of the Arbitral Tribunal, the Netherlands applied for provisional measures from ITLOS, which rendered an Order on 22 November 2013, that the vessel and all persons detained in connection with the dispute be released and allowed to leave Russian jurisdiction upon the posting of a bond.

By Note Verbale to the PCA dated 27 February 2014, Russia indicated "refusal to take part in this arbitration." In its Rules of Procedure dated 17 March 2014, the Arbitral Tribunal affirmed Russia's right to fully participate at any stage of the arbitration, and reserved its own authority to pose questions to the Parties regarding "specific issues which the Arbitral Tribunal considers have not been canvassed, or have been inadequately canvassed, in the pleadings submitted" by the Netherlands. On 28 November 2014, the Arbitral Tribunal took note of the fact that Russia had not submitted a Counter-Memorial and requested further written argument from the Netherlands on certain issues raised in its Memorial.

After inviting comments from the Parties regarding a request from Greenpeace International to file an amicus curiae submission in the case, the Arbitral Tribunal denied this request on 8 October 2014.

Following its determination that a 22 October 2013 Note Verbale from Russia to the Netherlands constituted a plea concerning the Arbitral Tribunal's jurisdiction, the Arbitral Tribunal issued an Award

on Jurisdiction on 26 November 2014. In this Award, the Arbitral Tribunal unanimously held that Russia's declaration upon ratifying the Convention did not exclude the present dispute from compulsory dispute settlement procedures. Having dismissed the preliminary objections, the Arbitral Tribunal held a hearing on the remaining issues in dispute on 11 February 2015 in Vienna, which Russia did not attend.



The Arbitral Tribunal was constituted on 13 March 2014. After a full exchange of written pleadings, on 23 and 24 February 2016, a hearing was held at the Peace Palace, in The Hague. The hearing pert

## F. ADDITIONAL RELEVANT PCA ACTIVITIES

### i. Support for other flexible dispute settlement mechanisms

The PCA also administers procedures, other than arbitration, in cases related to ocean and maritime affairs. Examples, such as the review of a decision of the Southern Pacific Regional Fisheries Management Organisation conducted in 2013, are included in the PCA's contribution to the 2015 Secretary-General's report, available at [http://www.un.org/depts/da/general\\_assembly/contributions\\_2015\\_2/PCA\\_Contribution.pdf](http://www.un.org/depts/da/general_assembly/contributions_2015_2/PCA_Contribution.pdf). The full record of those review proceedings is also available on the PCA website at <http://www.pcacases.com/web/view/33>

### ii. Education and outreach

The PCA regularly participates in conferences and publishes on issues relating to the peaceful settlement of disputes in international law, including in the context of the governance of oceans and the law of the sea. For example, the series of lectures presented by the PCA Deputy Secretary-General, Brooks Daly, at the 2014 Hague Academy of International Law on 'The Renaissance of Interstate Arbitration', are currently being edited for book publication. An important theme of the lecture series was the contribution of Part XV of the Convention to the increased use in recent years of arbitration for the peaceful resolution of interstate disputes. In 2016, Mr. Daly also presented lectures on the U Nations Convention on the Law of the Sea and related cases for the Advanced LLM in Public International Law at Leiden University.

The PCA has also engaged in education and outreach in relation to climate change related disputes. In addition to law of the sea related disputes, disputes involving issues of sustainable development and environmental law are increasing. The PCA participated in COP21, the meeting of the Conference of Parties to the United Nations Framework Convention on Climate Change, in late November and December 2015. The Secretary-General of the PCA, Hugo H. Siblescu, delivered a speech during the High Level Segment of COP21 on the contribution of the PCA to the resolution of environmental disputes (available at [https://pcacpa.org/wp-content/uploads/sites/175/2015/12/PCA\\_Speech\\_Release\\_dated8-December2015.pdf](https://pcacpa.org/wp-content/uploads/sites/175/2015/12/PCA_Speech_Release_dated8-December2015.pdf)). At a side event to COP21 jointly hosted by the International Bar Association, PCA, ICC Court of International Arbitration, and the Stockholm Chamber of Commerce, PCA Senior Legal Counsel Judith Levine delivered a speech entitled 'Adopting and Adapting Arbitration for Climate Change Related Disputes' –

iii. Coordination with other international institutions

The PCA seeks to contribute to a cooperative approach amongst international institutions engaged in the peaceful settlement of international disputes relating to maritime affairs. Through an exchange of letters between the Secretary-General of the PCA and the Registrar of ITLOS, the PCA and ITLOS have agreed to cooperate with respect to relevant legal and administrative matters. Under the arrangement, the PCA and ITLOS have undertaken to exchange documents, particularly those connected with disputes under Annex VII to the Convention, and to explore cooperation in other areas of concern.

iv. Financial assistance for access to peaceful dispute resolution services

The PCA and its Member States recognize the importance of ensuring equitable access to peaceful dispute resolution procedures. To this end, the Administrative Council of the PCA has established a Financial Assistance Fund that aims to help qualifying countries meet part of the costs involved in international arbitration or other means of dispute settlement offered by the PCA. Qualifying countries