

COUR

1. INTRODUCTION

The Under-Secretary-General for the Office of Legal Affairs has invited the PCA to contribute to the 2022 report of the United Nations Secretary-General on oceans and the law of the sea. The invitation requests information on the activities which have been undertaken or are ongoing in the implementation of specific provisions of United Nations General Assembly Resolution 76/72 of 9 December 2021 (“**Resolution 76/72**”) relevant to the PCA. In addition, the invitation requests information on the main developments at the PCA in the field of ocean affairs and the law of the sea that have occurred since the last reporting period. The part of Resolution 76/72 that is most relevant to the PCA is Section IV on the “Peaceful settlement of disputes”.

Section 2 of this report provides background on the PCA. Sections 3 and 4 provide an overview of the PCA’s case activities in relation to the Convention and in other dispute resolution proceedings involving the law of the sea. Section 5 contains a case-by-case description of relevant arbitration proceedings administered by the PCA in this Reporting Period. Finally, Section 6 sets out additional relevant activities undertaken by the PCA, particularly in the areas of outreach and education.

As some dispute resolution proceedings administered by the PCA are confidential, in whole or in part, this report is limited to publicly available information.

2. BACKGROUND ON THE PERMANENT COURT OF ARBITRATION

The PCA is an intergovernmental organization designed to facilitate arbitration and other modes of dispute resolution between States, State entities, intergovernmental organizations, and private parties. It is an autonomous institution, governed by the 122 Contracting Parties to one or both of its founding conventions: the 1899 and 1907 Conventions for the Pacific Settlement of International Disputes.

While it is the world’s oldest intergovernmental organization for the resolution of international disputes, the PCA has developed into a modern, multifaceted institution well situated to meet the evolving dispute resolution needs at the international level. In addition to arbitration, the PCA administers a range of dispute resolution mechanisms, including mediation, conciliation, fact-finding commissions, expert determinations, and review panels. The PCA is also a center for scholarship and publication, and a forum for legal discourse.

The PCA is currently administering 174 cases. These cases comprise 4 inter-State arbitrations; 105 investor-State arbitrations arising under bilateral or multilateral investment treaties or national investment laws; and 65 arbitrations arising under contracts involving States, other State-controlled entities, or intergovernmental organizations.

The International Bureau of the PCA, headed by the PCA Secretary-General, is the secretariat of the organization. The International Bureau is engaged in the day-to-day work of the organization in providing administrative support to tribunals or commissions operating under the PCA’s auspices. The PCA’s secretariat is also available to assist in the selection of arbitrators, and the PCA Secretary-General may be called upon to designate an appointing authority or act as appointing authority to assist in constituting tribunals or decide challenges against arbitrators. The PCA Secretary-General has received over 850 such requests to date. In other mechanisms, the Secretary-General may appoint members of review panels, commissions of inquiry, or other dispute settlement bodies. For example, the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean designates the Secretary-General as appointing authority to ensure the constitution of

agreement providing for a two-phase arbitration to resolve the issue of sovereignty over certain islands and maritime features located in the Red Sea and, thereafter, to delimit the maritime boundary between the two States. The parties designated the PCA as registry. The PCA also acted as registry in the *Arbitration between the Republic of Croatia and the Republic of Slovenia* (PCA Case No. 2012-

flying the Italian flag, and India's subsequent exercis

5.2. Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation), PCA Case No. 2017-06

Commencement date	16 September 2016
Jurisdictional basis	Article 287 and Annex VII to the Convention
Tribunal members	Judge Jin-Hyun Paik (President), Judge Boualem Bouguetaia, Judge Alonso Gómez-Robledo, Prof. Vaughan Lowe QC, Judge Vladimir Golitsyn
Status	Ongoing
Further information	https://pca-cpa.org/en/cases/149/

These proceedings were instituted on 16 September 2016, when Ukraine served on the Russian Federation a Notification and Statement of Claim⁶ under Annex VII of the Convention in respect of a “dispute concerning coastal state rights in the Black Sea, Sea of Azov, and Kerch Strait.”

The Tribunal was constituted on 29 November 2016. On 12 May 2017, the Tribunal held its first procedural meeting, during which it consulted with the Parties in respect of the procedural framework for the arbitration, including the calendar for oral and written pleadings.

On 19 February 2018, Ukraine filed its Memorial. Ukraine’s claims, as described in its Memorial, are that the Russian Federation has violated (i) “Ukraine’s rights to hydrocarbon resources in the Black Sea and Sea of Azov”; (ii) “Ukraine’s rights to living resources in the Black Sea, Sea of Azov, and Kerch Strait”; (iii) “Ukraine’s rights by embarking on a campaign of illegal construction in the Kerch Strait that threatens navigation and the marine environment”; (iv) “its duty to cooperate with Ukraine to address pollution at sea”; and (v) “Ukraine’s [Convention] rights and [its] own duties in relation to underwater cultural heritage.”

On 21 May 2018, the Russian Federation raised preliminary objections to the jurisdiction of the Tribunal on the grounds that (i) the Tribunal lacks jurisdiction because the Parties’ dispute in reality concerns Ukraine’s “claim to sovereignty over Crimea” and is therefore not a “dispute concerning the interpretation or application of the Convention” as required by Article 288, paragraph 1, of the Convention; (ii) the Tribunal has no jurisdiction over claims concerning activities in the Sea of Azov and in the Kerch Strait; (iii) the Tribunal has no jurisdiction in light of the Parties’ declarations under Article 298(1) of the Convention, relating to military activities, law enforcement activities, delimitation, and historic bays or titles; (iv) the Tribunal has no jurisdiction over fisheries claims in light of Article 297(3)(a) of the Convention; (v) the Tribunal has no jurisdiction over fisheries, protection and preservation of the marine environment, and navigation in light of Annex VIII to the Convention; and (vi) the Tribunal has no jurisdiction pursuant to Article 281 of the Convention. The Russian Federation further asked that the Tribunal hear its objections to the Tribunal’s jurisdiction in a preliminary phase of the proceedings.

On 20 August 2018, having received comments from both Parties in respect of the Russian Federation’s request, the Tribunal issued Procedural Order No. 3, deciding that it would examine the Russian Federation’s preliminary objections in a preliminary phase of the proceedings.

Between March and May 2019, the Parties submitted written pleadings concerning the Russian Federation’s preliminary objections and, from 10 to 14 June 2019, the Tribunal held a hearing concerning the preliminary objections at the Peace Palace in The Hague.

⁶ The full title of the document is “Notification under Article 287 and Annex VII, Article 1 of UNCLOS and Statement of the Claim and Grounds on which it is Based.”

On 21 February 2020, the Tribunal issued an Award concerning the preliminary issues

In its Procedural Order No. 2, issued on 27 October 2020, the Tribunal decided to hear the Russian Federation's Preliminary Objections in a preliminary phase of the proceedings. Judge Gudmundur Eiriksson appended a Dissenting Opinion to the Order of the Tribunal.

On 27 January 2021, Ukraine submitted its Written Observations and Submissions on the Preliminary Objections of the Russian Federation.

During the Reporting Period, from 11-15 October 2021, the hearing on the Russian Federation's Preliminary Objections was held at the Peace Palace in The Hague. The hearing took place in a hybrid