

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**

RULES OF PROCEDURE

ARBITRAL TRIBUNAL:

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

REGISTRY:

The Permanent Court of Arbitration

SECTION I. INTRODUCTORY RULES

Scope of Application

Article 1

1. The arbitration shall be conducted in accordance with these Rules and the relevant provisions of the 1982 United Nations Convention on the Law of the Sea (the “**Convention**”), including Annex VII to the Convention. These Rules are subject to such modification or additions as the Arbitral Tribunal may determine after ascertaining the views of the Parties.
2. To the extent that any question of procedure is not expressly governed by these Rules or by Annex VII to the Convention or other provisions of the Convention, the question shall be decided by the Arbitral Tribunal after ascertaining the views of the Parties.
3. The International Bureau of the Permanent Court of Arbitration (the “**PCA**”) shall serve as the Registry and shall take charge of the archives of the arbitration proceedings.

Commencement of the Proceedings

Article 2

The proceedings were instituted on 1 April 2019, when Ukraine served on the Russian Federation the Notification and Statement of Claim under Annex VII to the Convention.

Notice and Periods of Time

Article 3

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received by the Arbitral Tribunal when it has been delivered to the Registry, and by a Party when it has been delivered to the agents of that Party, appointed pursuant to Article 4. For the purposes of this paragraph, ‘delivered’ includes delivery by electronic means.
2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-work day in the State of the Party concerned or in The Netherlands, the period is extended until the first work day which follows. Official holidays or non-work days occurring during the running of the period of time are included in calculating the period.
3. Unless otherwise provided, all time limits expire at midnight in The Hague on the relevant date.
4. The Arbitral Tribunal may, after ascertaining the views of the Parties, extend or abridge any period of time prescribed under these Rules.

Representation and Assistance

Article 4

1. Each Party shall be represented by an agent and, if it so decides, by one or more co-agents. Each Party may also be represented by counsel and other persons chosen by that Party. The name and address of the agent and any co-agent shall be communicated in writing to the Registry.
2. To avoid possible conflicts of interest after the appointment of members of the Arbitral Tribunal, any proposed changes by a Party of its agents or counsel shall be communicated by that Party to the Arbitral Tribunal and copied to the other Party at the earliest possible date.

SECTION II. COMPOSITION OF THE ARBITRAL TRIBUNAL

Number and Appointment of Arbitrators

Article 5

The Arbitral Tribunal consists of five arbitrators, appointed in accordance with Article 3 of Annex VII to the Convention.

Replacement of an Arbitrator

Article 6

1. In the event of withdrawal, incapacity or death of an arbitrator during the course of the proceedings, the vacancy shall be filled in the manner prescribed for the initial appointment of the arbitrator in question in Article 3 of Annex VII to the Convention, with the understanding that the time periods stipulated in that Article should be calculated from the date of notification to the Parties of the withdrawal, incapacity or death of the arbitrator.
2. In the event that an arbitrator is replaced in accordance with paragraph 1, the proceedings shall resume at the stage where the replaced arbitrator ceased to perform his or her functions, unless the Arbitral Tribunal decides otherwise.

SECTION III. ARBITRAL PROCEEDINGS

General Provisions

Article 7

1. Subject to the provisions of the Convention, including Annex VII to the Convention, and these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the Parties are treated with equality and that at any stage of the proceedings each Party is given a full opportunity to be heard and to present its case.

2. The Parties shall facilitate the work of the Arbitral Tribunal in accordance with Article 6 of Annex VII to the Convention and these Rules.

Place of Hearings and Meetings

Article 8

1. The place of any hearings in this arbitration shall be The Hague, the Netherlands, unless decided otherwise by the Arbitral Tribunal after ascertaining the views of the Parties.
2. The Arbitral Tribunal may hold meetings at any place it deems appropriate.

Language, Translations and Interpretation

Article 9

1. The language of the arbitration is English. Accordingly, any decision by the Arbitral Tribunal, including any award or procedural order, and any correspondence sent on the Arbitral Tribunal's behalf by the Registry shall be communicated to the Parties in English only.
2. Any submissions or correspondence from the Parties shall be communicated in English. Any document submitted to the Arbitral Tribunal that is written in a language other than English shall be accompanied by a translation into English.
3. Certified translations shall not be required unless requested by the Arbitral Tribunal or a Party or there is a dispute over the accuracy of the translation. When a Party considers that the content of a document is not relevant in its entirety, any translation may be limited to the relevant passages and such other portions of the document that are necessary to put such passages in context. In such a case, the filing of the original text may be limited to the portions that are translated, unless either the Arbitral Tribunal or a Party requests the filing of the full document. A full translation shall be provided if the Arbitral Tribunal so requests, including on application by the other Party.

Objections to Jurisdiction or Admissibility

Article 10

1. The Arbitral Tribunal shall have the power to rule on objections to its jurisdiction or to the admissibility of the Notification and Statement of Claim or of any other claim made in the proceedings.
2. An objection on the ground of jurisdiction or admissibility shall be raised in writing no later than in the Counter-Memorial or, with respect to a counter-claim, no later than in the reply to the counter-claim.

Preliminary Objections

Article 11

1. Notwithstanding the provisions of Article 10, paragraph 2, any objection on the ground of jurisdiction or admissibility the decision on which is requested before any further proceedings on the merits (“**Preliminary Objection**”) shall be raised in writing by the date set by the Arbitral Tribunal.
2. Any Preliminary Objection shall set out the facts and the law on which it is based, as well as the submissions made in support of the Preliminary Objection.
3. The Arbitral Tribunal shall rule on any Preliminary Objection in a preliminary phase of the proceedings, unless the Arbitral Tribunal determines, after ascertaining the views of the Parties, that such Preliminary Objection does not possess an exclusively preliminary character and should be ruled upon in conjunction with the merits.
4. In the event that a Preliminary Objection submitted by a Party is addressed in a preliminary phase, the proceedings on the merits shall be suspended and the President of the Arbitral Tribunal shall fix a time limit within which the other Party may present its written observations and submissions.
5. Unless the Arbitral Tribunal decides otherwise after ascertaining the views of the Parties, the further proceedings shall be oral, and the hearing shall be held as expeditiously as is practicable.
6. The written observations and submissions referred to in paragraph 4, and the statements and evidence presented at the hearings contemplated by paragraph 5, shall be confined to those matters which are relevant to the Preliminary Objection. Whenever necessary, however, the Arbitral Tribunal may request the Parties to argue all questions of law and fact and to adduce all evidence bearing on the issue.
7. The Arbitral Tribunal shall give its decision on the Preliminary Objection in the form of an award, by which it shall uphold the Preliminary Objection or reject it or declare that it does not possess, in the circumstances of the case, an exclusively preliminary character. If the Arbitral Tribunal rejects the Preliminary Objection or declares that it does not possess an exclusively preliminary character, it shall fix time limits for the further proceedings.

Counter-Claims

Article 12

1. The Russian Federation may present a counter-claim provided that it is directly connected with the subject-matter of the claim of Ukraine and that it comes within the jurisdiction of the Arbitral Tribunal.
2. A counter-claim shall be made in the Counter-Memorial of the Russian Federation and shall appear as part of its submissions.
3. In the event of an objection regarding whether the counter-claim is directly connected with the subject-matter of the claim, the Arbitral Tribunal shall, after hearing the Parties, decide whether or not the counter-claim shall be joined to the original proceedings.

Provisional Measures

Article 13

1. A Party may submit a request for the prescription of provisional measures under Article 290, paragraph 1, of the Convention at any time during the course of the proceedings. The request shall be in writing and specify the measures requested, the reasons therefor and the possible consequences, if it is not granted, for the preservation of the respective rights of the Parties or for the prevention of serious harm to the marine environment. The evidence relied on in support of such request shall be attached to the request.
2. The Arbitral Tribunal, or the President if the Arbitral Tribunal is not sitting, shall fix the earliest possible date for a hearing.
3. The Arbitral Tribunal may prescribe measures different in whole or in part from those requested and indicate which Party is to take or to comply with each measure.
4. A Party may request in writing the modification or revocation of provisional measures. Before taking any decision on the request, the Arbitral Tribunal shall afford the Parties an opportunity of presenting their observations on the subject. Upon receipt of such a request the Arbitral Tribunal may decide to modify, suspend or terminate a provisional measure.
5. The Arbitral Tribunal may require any Party promptly to disclose any material change in the circumstances on the basis of which the provisional measure was requested or granted.

Form of Written Submissions

Article 14

1. The Parties shall submit together with any written submission all documentary, witness, expert and other evidence upon which they intend to rely in support of that submission.
2. The Parties shall also append electronic copies of legal authorities (such as treaties, laws, decrees or judicial decisions) cited in their written submissions, unless the authority is readily available free of charge from a public source identified by the Party submitting the document. In the event that the Arbitral Tribunal or the opposing Party require access to any legal authorities that have not initially been provided, the submitting Party shall provide such authorities within five (5) days of the request.
3. The Parties' written submissions shall be transmitted in the following manner:
 - (a) On or before the day of the deadline fixed by the Arbitral Tribunal, the submitting Party shall submit an electronic copy of its written submission (without supporting evidence or legal authorities) by e-mail to the Registry, which shall communicate it to the Arbitral Tribunal and simultaneously to the agents and counsel for the other Party.
 - (b) Within three (3) days thereafter, the submitting Party shall dispatch by courier twenty (20) paper copies and twenty (20) USB flash drives of its written submission to the Registry, for onward transmission to the other Party and the Arbitral Tribunal. All files contained on the USB flash drives shall be in Adobe PDF file format. Ten (10) paper copies and ten (10) USB flash drives shall be transmitted by the Registry to the other Party as soon as possible.

Amendments to the Claim or Defence

Article 15

During the course of the arbitral proceedings, either Party may, if given leave by the Arbitral Tribunal to do so, amend or supplement its claim or defence. A claim may not be amended or supplemented in such a manner that it falls outside the scope of the dispute submitted in the Notification and Statement of Claim as may be determined by the Arbitral Tribunal.

Evidence

Article 16

1. Each Party shall have the burden of proving the facts relied on to support its claim or defence.
2. The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence adduced.
3. Each document submitted to the Arbitral Tribunal shall be given an exhibit number (for Ukraine's documents, UA-1, UA-2, etc. for evidence and UAL-1, UAL-2, etc. for legal authorities; for the Russian Federation's documents, RU-1, RU-2, etc. for evidence and RUL-1, RUL-2, etc. for legal authorities) and each page of each document shall be numbered. Insofar as possible, all documentary evidence shall be submitted in the first round of written submissions. Hyperlinked indexes of documentary annexes should be provided.
4. Each document shall also be provided electronically. In this regard, each document shall be saved under a separate file name beginning with its document number.
5. At any time during the arbitral proceedings, and after ascertaining the views of the Parties, the Arbitral Tribunal may require the Parties to produce documents, exhibits or other evidence within such a period of time as the Arbitral Tribunal shall determine. The Arbitral Tribunal shall take note of any refusal to do so as well as any reasons given for such refusal.
6. Witnesses, including expert witnesses, who are presented by the Parties to testify to the Arbitral Tribunal on any issue of fact or expertise may be any individual. Unless otherwise directed by the Arbitral Tribunal, statements by witnesses must be presented in writing and signed by them.
7. The Arbitral Tribunal may take all appropriate measures in order to establish the facts.

Hearings

Article 17

1. There shall be hearings at which the Parties may make their oral submissions and for the presentation of evidence by witnesses, including expert witnesses. Taking account of the views of the Parties, the Arbitral Tribunal shall determine the manner in which witnesses are to be examined.

2. The dates for the hearings shall be set by the Arbitral Tribunal, after ascertaining the views of the Parties. The Arbitral Tribunal shall give the Parties adequate advance notice of the date, time and place of any oral hearing.
3. Each Party shall notify the Arbitral Tribunal of the names and addresses of the witnesses it intends to present for direct examination as well as the subject upon which and the languages in which such witnesses will give their testimony. Each Party shall communicate an initial notification to that effect at least forty-five (45) days before the hearing and a final notification at least thirty (30) days before the hearing. Within ten (10) days after receipt of the final notification of the other Party, a Party wishing to cross-examine a witness or witnesses whose evidence has been submitted by the other Party in accordance with Article 14, paragraph 1, and whose presence has not been notified in accordance with the procedure just noted shall communicate the name or names of such additional witness or witnesses.
4. As a general rule, witnesses shall be subject to direct examination by the Party presenting the witness. All witnesses of a Party shall be subject to cross-examination by the other Party. The Arbitral Tribunal may also put questions to the witnesses presented by the Parties. Except with the leave of the Arbitral Tribunal upon application by a Party, no witness may be heard unless he or she has provided a written report or witness statement, as applicable, which shall stand as his or her evidence in chief.
5. The Arbitral Tribunal may require the retirement of any witness during the testimony of other witnesses.
6. Where a language other than English is to be used by a witness, the necessary arrangements for interpretation into English shall be made by the Registry at the expense of the Party concerned.
7. The Registry shall make arrangements for a verbatim record of each hearing to be produced. A Party may request the inclusion in the verbatim record of footnotes limited to references to evidence, legal authorities and submissions, and not including any argument or statement of fact.
8. Following the hearing, the Arbitral Tribunal shall decide on the closure of the proceedings. Prior to the issuance of the final award, the Arbitral Tribunal may reopen proceedings if it deems such reopening necessary.

Experts Appointed by the Arbitral Tribunal

Article 18

1. After ascertaining the views of the Parties, the Arbitral Tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the Arbitral Tribunal. A copy of the expert's terms of reference, established by the Arbitral Tribunal, shall be communicated to the Parties.
2. The expert shall, before accepting appointment, submit a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the Arbitral Tribunal, the Parties shall inform the Arbitral Tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The Arbitral Tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a Party may object to the expert's qualifications, impartiality or independence only if the objection is for

reasons of which the Party becomes aware after the appointment has been made. The Arbitral Tribunal shall decide promptly what, if any, action to take.

3. The Parties shall cooperate in pursuance of Article 6 of Annex VII to the Convention with any expert(s) the Arbitral Tribunal has appointed pursuant to this Article. The Parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a Party and such expert as to the relevance of the required information or production shall be referred to the Arbitral Tribunal for decision. The Arbitral Tribunal shall take note of any refusal to provide such information or produce documents or goods for inspection as well as any reason given for such refusal.
4. Upon receipt of the expert's report, the Arbitral Tribunal shall communicate a copy of the report to the Parties, which shall be given the opportunity to express, in writing, their opinion on the report. A Party shall be entitled to examine any document on which the expert relied in his or her report.
5. If a Party so requests or if the Arbitral Tribunal considers it necessary, the expert shall, after delivery of the report, participate in a hearing where the Parties have the opportunity to put questions to him or her and to present expert witnesses in order to testify on the points at issue. The provisions of Article 17 shall be applicable to such proceedings.

SECTION IV. THE AWARD

Decisions

Article 19

1. In accordance with Article 8 of Annex VII to the Convention, any award or other decision of the Arbitral Tribunal shall be made by a majority of the arbitrators.
2. Questions of administration or routine procedure may be decided by the President of the Arbitral Tribunal alone, unless the President wishes to have the opinion of the other members of the Arbitral Tribunal or the Parties request a decision of the Arbitral Tribunal.

Form and Effect of the Award

Article 20

1. The award of the Arbitral Tribunal shall be rendered and shall have effect in accordance with Articles 10 and 11 of Annex VII to the Convention.
2. In addition to making a final award, the Arbitral Tribunal shall be empowered to make interim, interlocutory or partial awards.
3. An award shall be signed by the arbitrators. If any arbitrator fails to sign, the award shall state the reason for the absence of the signature.
4. Copies of the award signed by the arbitrators shall be communicated to the Parties by the Registry.

Applicable Law

Article 21

Pursuant to Article 293 of the Convention, the Arbitral Tribunal shall apply the Convention and other rules of international law not incompatible with the Convention.

Termination following a Settlement of the Dispute

Article 22

1. If, before an award is made, the Parties agree on a settlement of the dispute, the Arbitral Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the Parties and accepted by the Arbitral Tribunal, record the settlement in the form of an arbitral award on agreed terms.
2. Copies of an order for termination of the arbitral proceedings, signed by the arbitrators, shall be communicated to the Parties by the Registry. Where an arbitral award on agreed terms is made, the provisions of Article 19, paragraph 1, and Article 20 of these Rules shall apply.

Interpretation or Implementation of the Award

Article 23

1. Any request made by a Party in accordance with Article 12 of Annex VII to the Convention for a decision by the Arbitral Tribunal as regards the interpretation or manner of implementation of the award shall be made within six (6) months after the receipt of the award by giving notice to the Arbitral Tribunal and the other Party.
2. The decision of the Arbitral Tribunal in respect of a request pursuant to paragraph 1 shall form part of the award, and the provisions of Article 19, paragraph 1, and Article 20 of these Rules shall apply.

Correction of the Award

Article 24

1. Within thirty (30) days after the receipt of the award, either Party, with notice to the other Party and the Registry, may request the Arbitral Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. If the Arbitral Tribunal considers that the request is justified, it shall make the correction within forty-five (45) days of receipt of the request.
2. The Arbitral Tribunal may within thirty (30) days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of Article 19, paragraph 1, and Article 20 of these Rules shall apply.

SECTION V. EXPENSES AND COSTS

Expenses

Article 25

1. The expenses of the Arbitral Tribunal, including the remuneration of its members, shall be borne by the Parties in equal shares.
2. The expenses of the Arbitral Tribunal shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.
3. The Registry shall keep a record of all expenses of the Arbitral Tribunal, and shall furnish a final statement thereof to the Parties.

Costs

Article 26

Unless decided otherwise by the Arbitral Tribunal, each Party shall bear its own costs. The Arbitral Tribunal may make an award in respect of the costs incurred by the Parties in presenting their cases, as appropriate.

Deposit for Expenses

Article 27

1. The Registry may request each Party to deposit an equal amount as an advance for the expenses referred to in Article 25. All amounts deposited by the Parties pursuant to this Article shall be directed to the Registry, and disbursed by it for such expenses, including, *inter alia*, fees to the arbitrators and to the Registry.
2. During the course of the proceedings, the Registry or the Arbitral Tribunal may request supplementary deposits from the Parties.
3. If the requested amounts are not paid in full within sixty (60) days after the receipt of the request or such other period as may be set by the Registry, the Arbitral Tribunal shall so inform the Parties in order that the one or another of them may make the required payment. If such payment is not made in full within a further thirty (30) days, the Arbitral Tribunal may order the suspension or termination of the proceedings or take such other steps as it considers appropriate.
4. After a termination order or final award has been made, the Registry shall render an accounting to the Parties of the amounts received and return any unexpended balance to the Parties, as directed by the Arbitral Tribunal.

SECTION VI. TRANSPARENCY

Article 28

1. The existence of this arbitration shall be public. The Registry shall identify on the PCA website the names of the Parties, the members of the Arbitral Tribunal and the agents and counsel for the Parties. The Parties shall have an opportunity to review the content of any website relating to the case prior to the publication by the Registry.
2. The submissions of the Parties shall be confidential until the opening of the hearing to which they relate, save that any confidential information shall remain confidential at all times. On the opening of the hearing, the Registry shall publish the Parties' submissions as well as any non-confidential documentary evidence submitted with the submissions on the PCA website. The Parties shall refrain from publishing their submissions prior to their publication by the Registry.
3. The presentation of the Parties' opening statements at any hearing shall be open to the public. The Arbitral Tribunal, after ascertaining the views of the Parties, shall consider at the appropriate time the extent to which any other parts of hearings shall be open to the public.
4. Transcripts of any parts of hearings that are open to the public shall be public and promptly be made publicly available on the PCA website. Transcripts of any other parts of hearings shall be made public and publicly available with the publication of a final award, subject to appropriate redactions in accordance with the procedures to be adopted by the Arbitral Tribunal pursuant to paragraph 7.
5. Any procedural order of the Arbitral Tribunal shall be public and made publicly available on the PCA website seven (7) days after it has been notified to the Parties, unless the Parties agree on a different date of publication. In the event that a Party requests any redactions on account of the protection of confidential information, a procedural order shall be made publicly available in accordance with the procedures to be adopted by the Arbitral Tribunal pursuant to paragraph 7.
6. Any award of the Arbitral Tribunal shall be public and made publicly available on the PCA website unless both Parties agree otherwise. Prior to the publication of any award, the Parties shall be provided with a reasonable opportunity to identify any confidential information that they request to be redacted, in accordance with the procedures to be adopted by the Arbitral Tribunal pursuant to paragraph 7.
7. The Arbitral Tribunal, after ascertaining the views of the Parties, shall adopt procedures for the protection of confidential information in the present proceedings, including through appropriate arrangements at hearings and through redactions to the Parties' submissions and documentary evidence, the Arbitral Tribunal's procedural orders and awards, and any hearings transcripts.
8. The Registry, after consultation with the Parties, may issue periodic press releases concerning the status of the proceedings.