

c

## 1. INTRODUCTION

The Under Secretary General for the Office of Legal Affairs has invited the PCA to contribute to the 2024 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 78/69 of 5 December 2023 (“Resolution 78/69”) 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 78/69 that is most relevant to the PCA is Section V 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. Sections 5 and 6 contain a case-by-case description of relevant dispute resolution proceedings administered by the PCA in the Reporting Period. Finally, Section 7 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 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 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 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 205 cases. These cases comprise 6 inter-State arbitrations, 1 other inter-State proceeding, 98 investor-State arbitrations arising under bilateral or multilateral investment treaties or national investment law, and 96 7 (s al)-7.1 (so)-3.8 ( a cen)-3.7 (t)-1.7 (er)-1.9[(in)-S[(in)-1.7 11.607

The International Bureau has its headquarters at the Peace Palace in The Hague, the Netherlands, as well as permanent offices in Mauritius, Singapore, Buenos Aires, Vienna and Hanoi.

The PCA has concluded Host Country Agreements with a number of its Contracting Parties and cooperation arrangements with many institutions across the globe to make its dispute resolution services more widely accessible. During the Reporting Period, the PCA signed a Memorandum of Understanding with the Kingdom of Saudi Arabia. The Host Country Agreement with Paraguay was also ratified. The PCA moreover entered into a Cooperation Agreement with the Scottish Arbitration Centre and renewed its Cooperation Agreement with the Association for the Promotion of Arbitration in Africa (APAA).

### 3. PCA CASE ACTIVITIES IN RELATION TO THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The Convention sets forth in Part XI the means for the resolution of disputes between Parties arising out of its interpretation or application.

RI:3>BDCe.001 Tc 0.576 Tw 0.1

destruction of vessel (The Steamship Roumelios (Greece/Italy) 1955) and fishing rights (the Red Crusader Incident (The International Commission of Inquiry between Denmark and Great Britain regarding the Red Crusader Incident) 1961).

The PCA also administered more recent arbitrations involving the law of the sea brought in accordance with special agreements. In

These proceedings were instituted on 16 September 2016, when Ukraine served on the Russian Federation a Notification and Statement of Claim 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 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, maritime navigation, 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.

On 21 February 2020, the Tribunal issued an Award concerning the preliminary objections of the Russian Federation. The Tribunal, unanimously (i) upheld “the Russian Federation’s objection that the [Tribunal] has no jurisdiction over Ukraine’s claims to the extent that a ruling of the [Tribunal] on the merits of Ukraine’s claims necessarily requires it to decide, directly or indirectly, on the sovereignty of either Party over Crimea”; (ii) found “that the Russian Federation’s objection that the [Tribunal] has no jurisdiction over Ukraine’s claims concerning the activities in the Sea of Azov and the Kerch Strait does not possess an exclusively preliminary character, and accordingly decided to reserve this matter for consideration and decision in the proceedings on the merits”; (iii) rejected the other jurisdictional objections made by the Respondent; and (iv) requested Ukraine “to file a revised version of its Memorial, which shall take full account of the scope of, and limits to, the [Tribunal]’s jurisdiction as determined in the present Award.”

---

<sup>5</sup> 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 ~~af~~ced

to transit the Kerch Strait and began to sail away, they were ordered to stop by vessels of the Russian Federation. When the Ukrainian vessels failed to do so, the Russian Federation ~~accepted~~ and arrested the Ukrainian vessels and the servicemen on board. That same day, the Investigations

On 20 December 2022 and again on 2 March 2023, upon request from the Russian Federation, the Tribunal issued Procedural Orders Nos. 4 and 5 amending the procedural calendar.

On 30 May 2023, following the passing of Judge Vladimir V. Golitsyn, the Russian Federation's party-appointed member of the Tribunal, the Russian Federation appointed Professor Alexander N. Vylegzhanin as arbitrator.

During the Reporting Period on 9 October 2023, the Tribunal issued [Procedural Order No. 6](#) inviting the Parties to make further written submissions. More specifically, the Tribunal invited Ukraine to submit a Reply addressing the Russian Federation's preliminary objections. The Tribunal had joined to the merits phase in addition to any new matters identified in the Russian Federation's Counter Memorial, in particular the response of the Russian Federation to the request of the Arbitral Tribunal in its Award on Preliminary Objections for "further elucidation by the Parties before reaching a definitive conclusion on when military activities came to an end". The Russian Federation was also invited to file its Rejoinder following the filing by Ukraine of its Reply.

On 24 November 2023, the Russian Federation asserted challenges against Professor McRae and Judge Wolfrum for lack of independence and impartiality and requested their disqualification as arbitrators in this case as a result of their votes in support of the Declaration of the Institute of International Law on Aggression in Ukraine" dated 1 March 2022 (the "IDI Declaration") [e Re of its 197 Tc 0 T\(ha\(ilin\)-1.8 \(g\)<</a>](#)

management organisations that make decisions regarding, for example, the catch allocation for fish stocks in certain maritime areas.

The SPRFMO Convention, which came into effect on 24 August 2012, established the SPRFMO to manage various fish stocks including *Trachurus murphyi* (also known as “Chilean jack mackerel”, “horse mackerel”, or “jurel”), which it would do through Conservation and Management Measures.

On 10 April 2023, the Russian Federation presented an objection to the Conservation and Management Measure for *Trachurus murphyi* (“CMM 01-2023”) adopted by the SPRFMO Commission at its Eleventh Annual Meeting held from 13 February to 17 February 2023.

On 20 April 2023, the People’s Republic of China objected to its share in the total allowable catch of *Trachurus murphyi* in 2023 specified in paragraph 4 and 9 and Tables 1 and 2 of CMM 01-2023.

On 17 May 2023 a Review Panel comprising Professor Bernard Oxman, Dr. Cecilia Engler, Professor Shuolin Huang, Dr. Erik J. Molenaar and Ms. Olga Sedykh was established in accordance with paragraph 2 of Annex II of the SPRFMO Convention, and the PCA was appointed as registry to the review panel.

On 23 May 2023, Professor Shuolin Huang was appointed as a member of the review panel.

On 24 May 2023, in accordance with paragraph 3 of Annex II to the Convention, the People’s Republic of China appointed Professor Jianye Tang as a member of the review panel.

At the outset, the Review Panel considered whether the decision resulting in CMM 01-2023 with respect to allocations for 2023, to which the Russian Federation objected, was inconsistent with the provisions of the Convention, the SPRFMO Convention and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995 (1995 Agreement). The Review Panel was of the view that the provisions in the CMM 01-2023 to which the Russian Federation objected, were inconsistent with the provisions of the SPRFMO Convention or other relevant international law as reflected in the Convention or the 1995 Agreement. In particular, the Review Panel considered that the argument that consensus or consent are required to change the percentage allocation of the members of the SPRFMO Commission had no basis in the text of the SPRFMO Convention. In addition, the Review Panel found no basis to conclude that the SPRFMO Commission had acted outside of its wide margin of discretion under Article 21 of the SPRFMO Convention when taking its allocation decision.

Secondly, the Review Panel considered whether the Russian Federation suffered unjustifiable discrimination in form or in fact under Article 17(2)(c) of the SPRFMO Convention. The Review Panel considered the wording "in form or in fact" and found that it could not evaluate a claim of substantive discrimination. However, the Review Panel analyzed the possibility of procedural discrimination faced by the Russian Federation and concluded that there had been insufficient attention paid during the negotiation to ideas, factors, criteria and proposals of interest to the Russian Federation and similarly situated members of the SPRFMO Commission in comparison to the "relatively limited" for which the allocation percentages will in principle remain unchanged". As a result of the "hurried process culminating in the adoption of CMM 01-2023 by a divided vote", the Russian Federation's allocation interests were unjustifiably discriminated against.

Lastly, the Review Panel turned to alternative measures, disagreeing with the Russian Federation's proposal on the ground of risks of inconsistency in the total allowable catch and the allocation to other members and cooperating

the Hague Academy, the University of Basild Sciences Po Paris. Additionally, Mr. Doe was a speaker on the panel Dispute Resolution and the Global Community at the International Council for Commercial Arbitration (“ICCA”) Congress 2024 in Hong Kong. Senior Legal Counsel and Head of the PCA Vienna Office. Ms. Evgeniya Goriatcheva delivered a lecture on arbitration under Annex VII of the Convention as part of the ITLOS Nippon F