

**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**

PCA Case No. 2017-06

**Permanent Court of Arbitration
Peace Palace, The Hague
The Netherlands**

B E T W E E N

UKRAINE

- and -

THE RUSSIAN FEDERATION

- before -

**JUDGE JIN-HYUN PAIK (Presiding Arbitrator)
JUDGE BOUALEM BOUGUETAIA
JUDGE ALONSO GOMEZ-ROBLEDO
JUDGE VLADIMIR GOLITSYN
PROFESSOR VAUGHAN LOWE QC**

Heard on:

Monday, 10 June 2019

**MS O ZERKAL, Agent for Ukraine, and PROF H KOH, PROF
F SOONS, PROF J THOUVENIN, MS M CHEEK, MR J GIMBLETT,
MR D ZIONTS, MR N GORE, of Counsel, appeared on behalf of
Ukraine**

**MR D LOBACH, Agent for the Russian Federation, and MR
S WORDSWORTH QC, PROF A PELLET, PROF T TREVES, MR S USOSKIN,
MS A SANDER, of Counsel, appeared on behalf of the Russian
Federation**

**REGISTRY: DR DIRK PULKOWSKI, Senior Legal Counsel, appeared
for the Permanent Court of Arbitration**

ALSO PRESENT:

FOR THE PERMANENT COURT OF ARBITRATION

**Ms Ashwita Ambast, Legal Counsel
Mr Juan Ignacio Massun, Legal Counsel**

INTERPRETERS (FRENCH-ENGLISH)

**Ms Marie Daleq
Mr Jean-Christophe Pierret**

1

2 (10.00 am)

3 THE PRESIDENT: Good morning, ladies and gentlemen. I have
4 the pleasure of opening the hearing in PCA case number
5 2017-06, Dispute Concerning Coastal State Rights in the
6 Black Sea, Sea of Azov, and Kerch Strait, instituted by
7 Ukraine against Russian Federation under Annex VII to
8 the United Nations Convention on the Law of the Sea.

9 The present hearing will concern the parties'
10 arguments in relation to the preliminary objections
11 raised by the Russian Federation.

12 I am joined today by my colleagues and fellow
13 members of the arbitral tribunal in this proceeding. To
14 my left are Judge Gomez-Robledo and Judge Vladimir
15 Golitsyn; to my right are Judge Boualem Bouguetaia and
16 Prof Vaughan Lowe. My name is Jin-Hyun Paik.

17 On behalf of the arbitral tribunal, I welcome the
18 agents, co-agents, counsel, advisors, assistants, and
19 observers of Ukraine and the Russian Federation to the
20 hearing, and I express our gratitude to the parties for
21 their cooperation in the conduct of these proceedings.

22 Pursuant to procedural order number 5, the arbitral
23 tribunal shall sit today, 10 June 2019, and tomorrow,
24 11 June 2019, for the first round of oral arguments; and
25 on 13 and 14 June 2019 for the second round of oral

1 arguments.

2 I now call on the registrar to summarise the
3 procedure to date and to read out the submissions of the
4 parties in respect of the jurisdiction of the arbitral
5 tribunal as formulated in their written pleadings.

6 DR PULKOWSKI: Thank you, Mr President.

7 This arbitration was instituted by Ukraine on
8 16 September 2016 when it served on the Russian
9 Federation a notification under article 287 under
10 Annex VII, article 1 of UNCLOS, a statement of the claim
11 and grounds on which it is based, dated 14 September
12 2018, in respect of a dispute concerning Coastal State
13 Rights in the Black Sea, Sea of Azov, and Kerch Strait.

14 On 12 May 2017, a first procedural meeting with the
15 arbitral tribunal and parties was held at the Peace
16 Palace. At that meeting the procedure to be followed in
17 this arbitration was considered, following which the
18 Rules of Procedure were adopted on 18 May 2017. The
19 Rules of Procedure established a timetable for written
20 pleadings and set out the process for addressing any
21 preliminary objections.

22 Ukraine filed its memorial on 19 February 2018. On
23 21 May 2018, the Russian Federation submitted
24 preliminary objections dated 19 May 2018.

25 The Russian Federation requested that its

1 preliminary objections be heard in a preliminary phase
2 of the proceedings.

3 On 28 May 2018, the arbitral tribunal invited
4 Ukraine to comment on the Russian Federation's request
5 to deal with its preliminary objections in a preliminary
6 phase. Ukraine provided such comments on 18 June 2018.

7 On 4 July 2018, upon the arbitral tribunal's
8 request, the Russian Federation provided its reply to
9 Ukraine's comments of 18 June 2018.

10 On 20 August 2018, the arbitral tribunal issued
11 procedural order number 3, regarding bifurcation of the
12 proceedings, in which it unanimously, and I quote,
13 decided that "the preliminary objections of the Russian
14 Federation shall be addressed in a preliminary phase of
15 these proceedings."

16 At the same time, the proceedings on the merits were
17 suspended.

18 On 27 August 2018, having consulted with the
19 parties, the arbitral tribunal issued procedural order
20 number 4 regarding the timetable for the parties'
21 written pleadings on jurisdiction.

22 On 27 November 2018, Ukraine filed its written
23 observations concerning the preliminary objections of
24 the Russian Federation.

25 On 28 January 2019, the Russian Federation filed its

1 reply.

2 On 28 March 2019, Ukraine filed its rejoinder.

3 On 8 April 2019, the arbitral tribunal issued
4 procedural order number 5, regarding the schedule for
5 the hearing on jurisdiction, establishing the schedule
6 and modalities for the hearing on the preliminary
7 objections of the Russian Federation.

8 In its preliminary objections, the Russian
9 Federation states, and I quote:

10 "For the reasons set out in these preliminary
11 objections the Russian Federation requests the tribunal
12 to adjudge and declare that it is without jurisdiction
13 in respect of the dispute submitted to this tribunal by
14 Ukraine."

15 In its reply, the Russian Federation affirms, and
16 I quote:

17 "For the reasons set out in the preliminary
18 objections of the Russian Federation and this reply, the
19 Russian Federation requests the tribunal to dismiss the
20 submissions of Ukraine made in its written observations
21 of 27 November 2018 and to adjudge and declare that it
22 is without jurisdiction in respect of the dispute
23 submitted to this tribunal by Ukraine."

24 In its written observations, Ukraine states, and
25 I quote:

1 "For the foregoing reasons, Russia's preliminary
2 objections fail to show that the tribunal lacks
3 jurisdiction over any aspect of the submissions in
4 Ukraine's memorial. Ukraine accordingly:

5 (a) reiterates and renews the submissions and
6 requests for leave contained in chapter 7 of its
7 memorial;

8 (b) requests that this tribunal adjudge and declare
9 that its submissions fall within the jurisdiction
10 conferred on the tribunal pursuant to the Convention;
11 and

12 (c) requests that the tribunal award Ukraine its
13 costs for the jurisdictional phase of these proceedings,
14 pursuant to article 25 of the Rules of Procedure."

15 In its rejoinder, Ukraine affirms, and I quote:

16 "For the foregoing reasons, Ukraine reiterates and
17 renews the submissions and requests for relief contained
18 in chapter 7 of its memorial and chapter 6 of its
19 written observations on jurisdiction."

20 Mr President.

21 THE PRESIDENT: Thank you, Mr Registrar.

22 The arbitral tribunal, in consultation with the
23 parties, has fixed a schedule for this hearing.
24 According to the schedule, the Russian Federation will
25 present its first round of oral arguments today. The

1 time of the Russian Federation will begin to run only
2 once the initial housekeeping matters have been dealt
3 with.

4 Article 27, paragraph 3 of the Rules of Procedure
5 states that:

6 "The presentation of the parties' opening statements
7 at any hearing shall be open to the public."

8 Paragraph 2 of the procedural order number 5 notes
9 the parties' agreement that:

10 "The opening statement of each party's agent in the
11 first round of oral pleadings will be made accessible to
12 the public through an online stream available on the
13 website of the PCA ..."

14 Accordingly, I note that this portion of the hearing
15 is being webcast live on the internet. Members of the
16 diplomatic corps and the general public are also
17 following this public portion of the hearing in another
18 room in the Peace Palace. After the opening statement
19 made by the agent for the Russian Federation this
20 morning, the webcast will end. No other parts of
21 today's proceedings will be webcast.

22 May I now invite the agent for each party to
23 introduce their delegations. Since the Russian
24 Federation, which has raised the preliminary objection
25 in this case, will be heard first today, let me turn the

1 floor over to the agent to the Russian Federation,
2 Mr Dmitry Lobach, to introduce the delegation of the
3 Russian Federation.

4 MR LOBACH: Mr President, distinguished members of the
5 Tribunal, it is my privilege and honour to appear before
6 you as agent for the Russian Federation. Let me first
7 introduce myself. I am Dmitry Lobach,
8 ambassador-at-large, Ministry of Foreign Affairs of the
9 Russian Federation.

10 I also have the honour to introduce our renowned
11 counsel who will take the floor in this hearing. They
12 are Mr Samuel Wordsworth QC, member of the English and
13 Paris bars, Essex Court Chambers; Professor Alain
14 Pellet, emeritus professor, University of Paris
15 Nanterre, member of the Institute of International Law;
16 Professor Tullio Treves, emeritus professor, University
17 of Milan, member of the Institute of International Law;
18 Mr Sergey Usoskin, member of St Petersburg bar; Ms Amy
19 Sander, member of the English bar, Essex Court Chambers.

20 Thank you, Mr President.

21 THE PRESIDENT: Thank you, Mr Lobach.

22 I now the invite the agent for Ukraine, Ms Olena
23 Zerkal, to introduce the delegation of Ukraine.

24 MS ZERKAL: Mr President, distinguished members of the
25 tribunal. It's an honour for me to appear before this

1 tribunal as Ukraine's agent. My name is Olena Zerkal.
2 I am the Deputy Minister for Foreign Affairs of Ukraine.
3 And before I introduce the rest of our delegation,
4 I would like to take this opportunity to thank you, the
5 members of the tribunal, for your continued attention to
6 this critical case. And I would like to thank the
7 registry for the work that has gone into preparing
8 today's hearing.

9 With me is Ambassador Vsevolod Chentsov, the
10 ambassador of Ukraine to the Kingdom of Netherlands, who
11 is the co-agent of Ukraine. Ukraine's counsel and
12 advocates are Prof Harold Koh, Prof Fred Soons, Prof
13 Jean-Marc Thouvenin, Ms Marney Cheek, Mr Jonathan
14 Gimblett, Mr David Zions, Mr Nikhil Gore. Our team of
15 counsel and advisors are led by Ms Oksana Zolotaryova,
16 acting head of international department, law department
17 of the Ministry of Foreign Affairs; Mr Taras Kachka,
18 advisor to the Ministry of Foreign Affairs of Ukraine.
19 Also participating in our delegation are Ms Svitlana
20 Nizhnova and Mr Andrii Kondratov from the National Joint
21 Stock Company Chornomornaftogaz, which is Ukraine's
22 offshore natural gas producer; Mr Ivan Ivanchyk, who
23 works on port and other maritime issues on the Ukrainian
24 Ministry of Infrastructure; Mr Vladyslav Smirnov, the
25 Sea Guard of the State Border Guard Service of Ukraine;

1 and Mr Sergei Lopatiuk, who is an attorney with the
2 State Border Guard Service of Ukraine.

3 Mr President, this concludes my introduction of the
4 Ukrainian team. Thank you.

5 THE PRESIDENT: Thank you, Ms Zerkal.

6 I now request the agent for the Russian Federation
7 to proceed with his opening statement.

8 Opening submissions by THE RUSSIAN FEDERATION

9 MR LOBACH: Mr President, distinguished members of the
10 Tribunal. In accordance with the Tribunal's procedural
11 order number 3 of 20 August 2018 regarding bifurcation
12 of the proceedings, Russia will focus this week
13 exclusively on the issues of this Tribunal's
14 jurisdiction which, as is common ground, is limited to
15 disputes "concerning the interpretation or application"¹
16 of the United Nations Convention on the Law of the Sea.

17 I will introduce Russia's position on the case, and
18 then outline our jurisdictional objections. In the
19 course of today's pleading, our counsel will address
20 those objections in detail.

21 Ukraine asserts that the object of its claim in the
22 current proceedings "is to obtain redress for significant
23 maritime harms"². The key point is, however, that the
24 so-called "maritime claims" that Ukraine puts forward
25 depend substantially on prior determination of which

¹ Article 288(1) of UNCLOS.

² Ukraine's Rejoinder, p. 1, para. 4.

1 state is sovereign of Crimea and derived from the change
2 of the Peninsula's status.

3 Of course, Ukraine submits that this case is not
4 about land sovereignty. Ukraine's counsel have
5 formulated the case in the Statement of Claim and the
6 Memorial using the terminology of the Convention and
7 enumerating various articles allegedly violated by
8 Russia. None of this, however, can change the fact that
9 Ukraine's claims regarding Russia's "actions at sea"³
10 concern Russia's legitimate exercise of its coastal
11 State rights in the waters adjacent to the Crimean
12 Peninsula. So, no matter how its submissions have been
13 framed to match the UNCLOS language, it is clear that
14 the thrust of Ukraine's case is the disputed sovereignty
15 over Crimea and appertaining maritime zones.

16 Mr President, members of the Tribunal. Despite the
17 high regard with which Russia views this Tribunal
18 constituted under Annex VII to UNCLOS and exercising
19 jurisdiction pursuant to article 288 of the Convention,
20 it cannot determine which state is sovereign over
21 Crimea; it is not entitled to determine disputed issues
22 of land territory such as the Crimean Peninsula.

23 It is clear that the state parties, including
24 Russia, when acceding to UNCLOS, did not consent to
25 confer upon arbitral tribunals, constituted in

³ Ukraine's Rejoinder, p. 3, para. 8.

1 accordance with Part XV, a power to decide disputes on
2 the sovereignty over land territory that may have a sea
3 coast. Were it otherwise, many states would have
4 brought their territorial disputes within the compulsory
5 dispute settlement under the Convention.

6 Mauritius' attempt to do this with respect to its
7 sovereignty dispute with the United Kingdom over the
8 Chagos archipelago was rejected. The Annex VII tribunal
9 confirmed that it was without jurisdiction, noting that
10 to read the Convention "as a warrant to assume
11 jurisdiction over matters of land sovereignty on the
12 pretext that the Convention makes use of the term
13 'coastal State' would do violence to the intent of the
14 drafters of the Convention to craft a balanced text and
15 to respect the manifest sensitivity of States to the
16 compulsory settlement of disputes relating to sovereign
17 rights and maritime territory"⁴.

18 Consistent with that finding, when the Philippines
19 brought its claim against China before an Annex VII
20 tribunal, it didn't ask the tribunal to resolve the
21 issue of territorial sovereignty over the Scarborough
22 Shoal and the Spratly Islands. Hence, the tribunal in
23 the *South China Sea* arbitration emphasised that it was
24 "entirely possible to approach the Philippines'
25 submissions from the premise - as the Philippines

⁴ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 219 (UAL-18).

1 suggests -that China is correct in its assertion of
2 sovereignty over Scarborough Shoal and the Spratlys"⁵.

3 This is not the case in the matter before this
4 Tribunal. Ukraine's claim relies upon precisely the
5 reverse premise- that its claim should be approached
6 from the assumption that Russia is incorrect in its
7 assertion of sovereignty over Crimea. The Tribunal in
8 the *South China Sea* case clearly expressed its intention
9 "to ensure that its decision neither advances nor
10 detracts from either Party's claims to land sovereignty"⁶.

11 We urge you, Mr President and Members of the
12 Tribunal, to take the same approach and to ensure that
13 your decision neither advances nor detracts from either
14 Party's claim to land sovereignty over Crimea.

15 The way to achieve that is to conclude that this
16 Tribunal does not have jurisdiction to determine
17 Ukraine's claims premised on its position that it is the
18 coastal state of Crimea.

19 Ukraine tries to distinguish the present case from
20 the well-known precedents to which I have just referred.
21 It claims, for instance, that the dispute concerning
22 land sovereignty over Crimea is an abusive claim⁷, unlike
23 the one in the *Chagos Marine Protected Area* case.

24 We agree that the case of Crimea is in certain
25 respects different from that of the Chagos Archipelago,

⁵ *Philippines v. China*, Award on Jurisdiction and Admissibility, p. 60, para. 153 (UAL-3).

⁶ *Philippines v. China*, Award on Jurisdiction and Admissibility, p. 60, para. 153 (UAL-3).

⁷ Ukraine's Rejoinder, paras. 26, 28.

1 but not in any way that assists Ukraine. The Atoll of
2 Diego Garcia is almost 10,000 km away from London and,
3 as was pointed out in this year's Advisory Opinion by
4 the International Court of Justice, the placing of the
5 Archipelago under the British administration in 1965 "was
6 not based on the free and genuine expression of the will
7 of the people concerned"⁸.

8 As concerns Crimea, by contrast, the Peninsula was
9 an integral part of Russia, not a colony, for more than
10 170 years, until it was arbitrarily transferred in 1954
11 within one state, the former USSR, from the Russian
12 Soviet Socialist Republic to the Ukrainian Soviet
13 Socialist Republic without the consent of the people
14 concerned.

15 Crimea's reunification with Russia, on the contrary,
16 is based on the free and genuine expression of the will
17 of its inhabitants. As we have already noted in our
18 written pleadings, more than 83 per cent of Crimea's
19 electorate took part in the referendum of 2014,
20 preceding the Treaty on the Accession of Crimea to
21 Russia. Over 96 per cent of voters expressed their will
22 to reunite with Russia⁹.

23 Five years after the referendum, the Crimeans'
24 support for their historic choice has not dwindled,
25 notwithstanding all the hardship they have been

⁸ *Legal Consequences of the Separation of the Chagos Archipelago From Mauritius in 1965*, Advisory Opinion of 25 February 2019, p. 41, para.172 (UAL-94).

⁹ Russia's Preliminary Objections, para. 11.

1 subjected by Ukraine in revenge, including the cutting
2 off of water and electricity supply from the mainland to
3 the Peninsula.

4 Ukraine's assertion that Russia integrated Crimea in
5 order to exploit Ukraine's resources in the surrounding
6 waters for Russia's own ends¹⁰ is inconsistent with
7 reality. Russia spends approximately one-fifth of total
8 federal budget targeted to all its 85 regions for the
9 economic recovery of Crimea. In no way can Russia's
10 claim to sovereignty over Crimea be characterised as
11 abusive. The reunification of Crimea with Russia
12 occurred well before Ukraine instituted the current
13 proceedings. As early as July 2014, the Russian
14 Federation sent a letter to the International Maritime
15 Organisation, affirming Russia's status as a coastal
16 state in relation to water surrounding Crimea and taking
17 full responsibility for implementation therein of
18 relevant rules of international law, including, where
19 applicable, UNCLOS¹¹.

20 By the time that Ukraine filed its Statement of
21 Claim in September 2016, Crimea had been fully
22 integrated into the legal system of the Russian
23 Federation as well as its social, political and economic
24 life. To circumvent the obvious lack of jurisdiction of
25 this UNCLOS Tribunal to decide territorial disputes,

¹⁰ Ukraine's Memorial, p. I, para. 1.

¹¹ Communication from the Government of the Russian Federation as per IMO Circular Letter No. 3471, 7 July 2014, Russia's Preliminary Objections (RU-36).

1 Ukraine has invented two novel arguments. It insists
2 that Russia's claim to sovereignty over Crimea is
3 neither admissible nor plausible. As a general
4 observation, it would be hard to find a real territorial
5 dispute where an opposing state does consider the other
6 state's claim in respect of the disputed territory to be
7 plausible.

8 Mr Sam Wordsworth will further explain why such
9 arguments are untenable. I will limit myself to a few
10 remarks.

11 First, Ukraine mistakenly asserts that by admitting
12 Russia's principal preliminary objection, the Tribunal
13 will become the first international body to recognize
14 an alteration in the legal status of Crimea"¹². This is
15 incorrect.

16 By doing that, the Tribunal will only acknowledge
17 that it lacked jurisdiction to pronounce on the legality
18 of the Crimea's status alteration.

19 Second, in its Rejoinder, Ukraine refers to the
20 recent ICJ Advisory Opinion on the *Legal Consequences of*
21 *the Separation of the Chagos Archipelago from Mauritius*
22 *in 1965* as confirmation that the General Assembly
23 resolutions draw weight from the Assembly's unique role
24 in the UN Charter system¹³.

25 But that concerned a very different context arising

¹² Ukraine's Rejoinder, p. 6, para. 15.

¹³ Ukraine's Rejoinder, p. 10, para. 21.

1 from the process of decolonisation. In the present
2 context, the General Assembly has no dispute settlement
3 function and no authority to determine whether Russia is
4 or is not breaching international law with respect to
5 Crimea.

6 Furthermore, contrary to what Ukraine asserts, there
7 is no international consensus on the legal status of
8 Crimea. The support for politicised General Assembly
9 resolutions on Crimea sponsored by Ukraine has been
10 dwindling from year to year¹⁴. As regards the
11 plausibility argument, it is obvious that Ukraine tries
12 to draw Russia into addressing the merits of the legal
13 dispute on the legality of Crimea's accession to the
14 Russian Federation.

15 This dispute, however, is outside the scope of the
16 jurisdiction of this Tribunal.

17 In its Rejoinder, Ukraine added new several
18 arguments. The first concerns an application of the
19 decision of the *Chagos* arbitration. Ukraine asserts
20 that there is jurisdiction where the dispute over land
21 sovereignty is ancillary or is not where the weight of
22 the dispute lies¹⁵. But Ukraine's claim that it is the
23 Coastal State of Crimea is at the front and centre of
24 the matter before this Tribunal.

25 The second new argument is that Russia is allegedly

¹⁴ Russia's Reply, p. 11, para. 26.

¹⁵ Ukraine's Rejoinder, p. 20, para. 42.

1 estopped from claiming territorial sovereignty over
2 Crimea because of its past statements¹⁶. The principle
3 of estoppel cannot apply in the present case. Russia
4 does not contest that for a period of time, Crimea was
5 part of Ukraine. However, this does not change the fact
6 that in 2014, Crimea became an integral part of Russia.
7 The circumstances of this change -- let me repeat our
8 basic point -- are beyond the scope of compulsory
9 dispute settlement under the Convention.

10 I will remind our Ukrainian counterparts that since
11 the signing of the Helsinki final act in 1975 to which
12 they refer, the interstate borders in Europe have
13 repeatedly changed. There was a reunification of
14 Germany, the dissolution of Yugoslavia, Czechoslovakia,
15 and the Soviet Union. In August 1991, Ukraine itself,
16 citing the mortal danger surrounding Ukraine in
17 connection with the coup d'Etat in the USSR", and with
18 reference to the right of people to self-determination,
19 declared its independence¹⁷.

20 Similarly, in 2014, pursuant to the outcome of the
21 referendum, the people of Crimea declared their will to
22 reunite with Russia¹⁸.

23 The principle of territorial integrity has not
24 prevented numerous states from asserting before the ICJ
25 the legality of the Unilateral Declaration of Independence

¹⁶ Ukraine's Rejoinder, p. 12, para. 25.

¹⁷ Resolution "On Declaration of Independence of Ukraine", *Vedomosti Verkhovnoyi Rady* (VVR), 1991, No.38, p. 502, available in English at http://static.rada.gov.ua/site/postanova_eng/Rres_Declaration_Independence_rev12.htm (RU-89).

¹⁸ Resolution "On the Independence of Crimea, taken at an extraordinary plenary session of the Supreme Soviet of the Autonomous Republic of Crimea on 17 March 2014", available at <http://crimea.gov.ru/act/11748>, Russia's Preliminary Objections, fn. 16 (RU-33).

1 by Kosovo or recognising Kosovo as an independent state.
2 Moreover, the ICJ concluded that "the adoption of the
3 Declaration of Independence by Kosovo did not violate
4 general international law"¹⁹.

5 I will now return to our other objections.

6 The jurisdiction of the tribunal constituted under
7 Annex VII to UNCLOS is obviously limited by the scope of
8 the states' consent to compulsory jurisdiction under
9 Part XV of UNCLOS.

10 Professor Alain Pellet will demonstrate that this
11 Tribunal lacks jurisdiction to hear this dispute because
12 of the extensive declarations made by both parties in
13 accordance with article 298 of UNCLOS²⁰.

14 Specifically, the Russian Federation did not consent
15 to the mandatory dispute settlement under the Convention
16 with respect to disputes concerning military activities
17 or law enforcement activities in regard to the exercise
18 of sovereign rights or jurisdiction. Yet, the core of
19 Ukraine's claim relates to the alleged Russian military
20 conduct in Crimea. Ukraine's claim is ultimately based
21 on the premise that Russia cannot be sovereign over
22 Crimea because it unlawfully annexed the Peninsula by
23 alleged use of force.

24 As we pointed out in our Reply, Russia strongly
25 rejects any such claims. Ukraine cannot, however, have

¹⁹ *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 53, para. 122 (RUL-70).

²⁰ *Russia's Preliminary Objections*, pp. 3-4, para. 8.

1 it both ways. If the Tribunal were to reject Russia's
2 preliminary objection as to sovereignty, accepting
3 Ukraine's allegation that Russia unlawfully used force
4 (*quod non*), it would then follow that the case concerns
5 military activities and is thus outside its jurisdiction
6 pursuant to the declarations made by both states under
7 Article 298(1)(b).

8 In addition, delimitation disputes are also excluded
9 from binding settlements in accordance with the Parties'
10 declarations made under Article 298 of UNCLOS. Yet,
11 Ukraine's claims as regards its alleged sovereign rights
12 could not be ruled upon without first delimiting the
13 maritime areas at issue.

14 Further, the automatic limitation on compulsory
15 dispute settlement procedure provided for in
16 Article 297(3)(a) of UNCLOS applies.

17 Therefore, any dispute relating to Russia's
18 sovereign rights and their exercise with respect to
19 their living resources in its exclusive economic zone,
20 including in the Black Sea, is excluded from this
21 Tribunal's jurisdiction.

22 Professor Alain Pellet will also address both States'
23 declaration opting for a special Annex VIII arbitral
24 tribunal to determine disputes related to fisheries,
25 navigation, and protection and preservation of marine

1 environment, that precludes the jurisdiction of this
2 Tribunal as to the resolution of such disputes.

3 Mr President, members of the Tribunal, a significant
4 part of Ukraine's case concerns Russia's activities in
5 the Sea of Azov, and the Kerch Strait. However, these
6 maritime areas are not regulated by UNCLOS since they
7 have always been and continue to be internal waters, as
8 Ukraine has recognised on many occasions, including as
9 recently as 2018.

10 As Professor Tullio Treves will further detail, both
11 States' shared sovereignty over the Sea of Azov has been
12 inherited from the Russian Empire and the Soviet Union
13 in accordance with the principles of State succession.
14 It is confirmed by the fact of continuous state practice
15 and bilateral agreements. Furthermore, the shared
16 sovereignty over the Sea of Azov has never been
17 contested by any state.

18 As concerns the Kerch Strait, the Russian Federation
19 has been exercising sovereignty there since the
20 reintegration of Crimea. The Russian Federation
21 recognises certain rights of Ukraine related to the
22 Kerch Strait, for instance, freedom of navigation for
23 Ukrainian ships and a right to free passage for foreign
24 non-military vessels sailing to and from Ukrainian ports
25 in the Sea of Azov by virtue of the 2003

1 Russian-Ukrainian Treaty on Cooperation in the Sea of
2 Azov and the Kerch Strait.

3 Ukraine's assertions that Russia intentionally
4 interferes with Ukrainian and international navigation
5 in the Kerch Strait and the Sea of Azov are baseless²¹.
6 The Russian Coast Guard inspects vessels sailing through
7 the Strait in accordance with the Russian law
8 requirements. A temporary increase in the number of
9 such inspections was explained by the need to ensure
10 security of the Crimean Bridge after its first stage was
11 commissioned in 2018, rather than to exert political or
12 economic pressure on Ukraine.

13 In any event, UNCLOS does not regulate the rights
14 and obligations of coastal states in their internal
15 waters. Accordingly, all of Ukraine's claims pertaining
16 to Russia's activities in the Sea of Azov and the Kerch
17 Strait should be dismissed for lack of jurisdiction.

18 Today's pleadings of the Russian Federation will be
19 concluded by Mr Sergey Usoskin, who will demonstrate
20 that this Tribunal's jurisdiction is also precluded by
21 Article 281 of UNCLOS.

22 Russia and Ukraine concluded two bilateral treaties
23 which provided that disputes between them relating to
24 "adjacent sea areas" and "the Kerch Strait" area should
25 be settled exclusively by agreement; in other words, by

²¹ Ukraine's letter to the Tribunal regarding the aggravation of the dispute, 27 November 2018, p. 1.

1 negotiations.

2 Ukraine has manifestly failed to engage in genuine
3 negotiations with Russia on these matters and thus has
4 not fulfilled the necessary procedural requirements
5 before submitting these issues to the Tribunal.

6 Mr President, members of the Tribunal, we hope to
7 use our time efficiently and we will be endeavouring to
8 finish well within our allotted time. But before I hand
9 over to our counsel, we note that on 25 May 2019, the
10 International Tribunal for the Law of the Sea rendered
11 its Order on Ukraine's request for the prescription of
12 Provisional Measures in the case concerning the
13 detention of three Ukrainian naval vessels. It will not
14 be a big surprise that the Russian Federation
15 respectfully disagrees with the Order since in Russia's
16 view, the tribunal to be constituted under Annex VII of
17 UNCLOS will not have jurisdiction to rule on Ukraine's
18 claims.

19 Be that as it may, the said case is different from
20 the one under your consideration and Ukraine itself
21 elected not to seek to include its claim regarding
22 immunity of its warships and servicemen in the current
23 proceedings.

24 In conclusion, I wish to reiterate that all of
25 Ukraine's claims are misconceived and outside of the

