



**CONTRIBUTION OF THE PERMANENT COURT OF ARBITRATION TO  
THE REPORT OF THE UNITED NATIONS SECRETARY-GENERAL ON OCEANS  
AND THE LAW OF THE SEA, AS AT 14 JUNE 2024<sup>1</sup>**

## EXECUTIVE SUMMARY

The Permanent Court of Arbitration (“PCA”) is an intergovernmental organization that provides dispute resolution services to the international community. It has unparalleled experience in the administration of inter-State dispute resolution proceedings concerning oceans and the law of the sea.

The PCA has acted as registry in 14 of the 15 arbitrations conducted pursuant to Annex VII of the 1982 United Nations Convention on the Law of the Sea (“**Convention**”), as well as in the first (and, to date, only) compulsory conciliation under Annex V of the Convention. The PCA has also administered dispute resolution proceedings involving the law of the sea brought under other legal instruments.

In the period since the PCA’s last contribution to the report of the United Nations Secretary-General on oceans and the law of the sea in June 2023 (“**Reporting Period**”), the PCA has continued to administer the following arbitrations brought under the Convention:

- [\*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, which was instituted in September 2016 and remains pending; and
- [\*Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen \(Ukraine v. the Russian Federation\)\*](#), PCA Case No. 2019-28, which was instituted in April 2019 and remains pending.

During this Reporting Period, the PCA has also served as registry in proceedings conducted by a [\*Review Panel established under Article 17 and Annex II of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean\*](#), PCA Case No. 2023-33, in which the Review Panel issued its Findings and Recommendations on 1 July 2023.

Additionally, the PCA has continued to engage in outreach and education activities relevant to the law of the sea.

---

<sup>1</sup> For developments after 14 June 2024 and further information about the PCA see [www.pca-cpa.org](http://www.pca-cpa.org).

## 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 this 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, 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 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 laws; and 96 arbitrations arising under contracts involving States, other State-controlled entities, or intergovernmental organizations, and 4 other proceedings.

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 one thousand 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 (“**SPRFMO Convention**”) designates the Secretary-General as appointing authority to ensure the constitution of review panels, which provide findings and recommendations on objections to decisions of the Commission of the South Pacific Regional Fisheries Management Organisation (“**SPRFMO**”).

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 Ha Noi.

The PCA has concluded Host Country Agreements with a number of its Contracting Parties and cooperation arrangements with many institutions across the globe in order 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 XV rules for the resolution of disputes between States Parties 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), or if the disputing parties have not accepted the same procedure for the settlement of the dispute. Since the Convention came into force in 1994, the PCA has administered all but one of the fifteen arbitrations conducted pursuant to Annex VII of the Convention. The Annex VII arbitrations of this Reporting Period are discussed in further detail in Section 5 below.

Additionally, Article 298 of the Convention provides for compulsory conciliation under Annex V where a State has elected to exclude certain subject-matters from arbitration or judicial settlement. In 2016-2018, the PCA assisted a five-member Conciliation Commission in the first (and thus far only) compulsory conciliation under Annex V of the Convention: the *Timor Sea Conciliation between Timor-Leste and Australia* (PCA Case No. 2016-10). The Conciliation Commission held extensive confidential meetings with the two States, during which they first agreed to an integrated package of confidence-building measures intended to facilitate the conciliation process, and eventually reached agreement on a maritime boundaries treaty, which was signed on 6 March 2018 at a ceremony hosted by the Secretary-General of the United Nations.<sup>2</sup>

### **4. OTHER PCA DISPUTE RESOLUTION PROCEEDINGS INVOLVING THE LAW OF THE SEA**

#### **4.1. Arbitrations**

As noted in the PCA's prior reports, the PCA has administered historical and contemporary arbitrations involving the law of the sea that were not brought under the Convention. Some of the earliest arbitrations administered by the PCA continue to provide significant jurisprudence on aspects of the law of the sea, including: naval engagement (*The Dogger Bank Case (The International Commission of Inquiry between Great Britain and Russia arising out of the North Sea Incident)*, 1904); the flagging of vessels (*Muscat Dhows (France/Great Britain)*, 1905); maritime delimitation (*The Grisbådarna Case (Norway/Sweden)*, 1909); fisheries (*North Atlantic Coast Fisheries (Great Britain/United States)*, 1910); port State obligations (*The Orinoco Steamship Company (United States/Venezuela)*, 1910); vessel seizure (*The "Carthage" and French Postal Vessel "Manouba" (France/Italy)*, 1913);

---

<sup>2</sup> The conciliation is described in greater detail in Section E of the PCA's contribution to the 2019 United Nations Secretary-General's report, at <https://pca-cpa.org/en/documents/publications/reports-to-un-division-for-ocean-affairs-and-the-law-of-the-sea/>. Further information is also available on the PCA website at <https://pca-cpa.org/en/cases/132/>.

destruction of vessels (*The Steamship Roula (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 the *Eritrea/Yemen* case (PCA Case No. 1996-04), the parties concluded an 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. 2012-04), which was conducted pursuant to an arbitration agreement between the parties tasking the arbitral tribunal to determine (i) “the course of the maritime and land boundary between the Republic of Slovenia and the Republic of Croatia”; (ii) “Slovenia’s junction to the High Sea”; and (iii) “the regime for the use of the relevant maritime areas.”<sup>3</sup>

## **4.2. Other flexible dispute settlement mechanisms**

The PCA also administers dispute settlement mechanisms other than arbitration in cases related to oceans and the law of the sea that are not brought under the Convention. In 2013, 2018 and, as further detailed below, in 2023, the PCA served as registry to three review panels established under Article 17 and Annex II of the SPRFMO Convention (entered into force on 24 August 2012). The first two reviews regarded the objections respectively made by the Russian Federation and the Republic of Ecuador to fisheries conservation and management measures adopted by the SPRFMO Commission. Each of the two review proceedings was conducted within less than three months and allowed for the participation, through oral and written submissions, of the objecting State and the representatives of the SPRFMO, as well as of all other members of the SPRFMO Commission and cooperating non-contracting parties.<sup>4</sup> The third review panel concerned an objection submitted by the Russian Federation in April 2023 and is described in Section 6 below.

## **5. RELEVANT PCA ARBITRATIONS ADMINISTERED IN THIS REPORTING PERIOD**

### **5.1. 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**

<b>Commencement date</b>	16 September 2016
<b>Jurisdictional basis</b>	Article 287 and Annex VII to the Convention
<b>Tribunal members</b>	Judge Jin-Hyun Paik (President), Judge Boualem Bouguetaia, Judge Alonso Gómez-Robledo, Prof. Vaughan Lowe KC, Judge Vladimir Golitsyn (until 26 March 2023), Professor Alexander Vylegzhanin (as of 30 May 2023)
<b>Status</b>	Ongoing
<b>Further information</b>	<a href="https://pca-cpa.org/en/cases/149/">https://pca-cpa.org/en/cases/149/</a>

---

<sup>3</sup> This arbitration is described in greater detail in Section E of the PCA’s contribution to the 2019 United Nations Secretary-General’s report, at <https://pca-cpa.org/en/documents/publications/reports-to-un-division-for-ocean-affairs-and-the-law-of-the-sea/>. Further information is also available on the PCA website at <https://pca-cpa.org/en/cases/3/>.

<sup>4</sup> These proceedings are described in greater detail in the PCA’s contributions to the 2015 and 2019 Secretary-General’s reports on oceans and the law of the sea, which can be accessed at <https://pca-cpa.org/en/documents/publications/reports-to-un-division-for-ocean-affairs-and-the-law-of-the-sea/>.

These proceedings were instituted on 16 September 2016, when Ukraine served on the Russian Federation a Notification and Statement of Claim<sup>5</sup> 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(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.

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 implicitly, 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 decid[ed] 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 also fixed the procedural timetable for further proceedings, which was revised on 17 November 2020 upon a request from Ukraine.

Ukraine filed its Revised Memorial on 20 May 2021.

On 13 December 2021 and again on 20 July 2022, upon requests from the Russian Federation, the Tribunal issued Procedural Orders No. 8 and 9, further revising the procedural timetable.

On 14 October 2022, the Russian Federation filed its Counter-Memorial and, on 24 March 2023, Ukraine filed its Reply.

On 26 March 2023, the member of the Tribunal originally appointed by the Russian Federation, Judge Vladimir Golitsyn, passed away. In accordance with Article 6 of the Tribunal's Rules of Procedure, on 30 May 2023, the Russian Federation appointed Professor Alexander N. Vylegzhanin to succeed Judge Golitsyn on the Tribunal.

During the Reporting Period, on 26 June 2023, the Tribunal issued [Procedural Order No. 10](#), rejecting a request by the Russian Federation for a suspension of the arbitration and revising the procedural timetable.

On 29 September 2023, upon a request from the Russian Federation, the Tribunal issued [Procedural Order No. 11](#), further revising the procedural timetable.

In accordance with that procedural calendar, the Russian Federation filed its Rejoinder on 8 December 2023.

## **5.2. Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Ukraine v. the Russian Federation), PCA Case No. 2019-28**

<b>Commencement date</b>	1 April 2019
<b>Jurisdictional basis</b>	Article 287 and Annex VII to the Convention
<b>Tribunal members</b>	Professor Donald McRae (President) (until 6 March 2024), Judge Gudmundur Eiriksson, Judge Rüdiger Wolfrum (until 6 March 2024), Sir Christopher Greenwood, GBE, CMG, KC, Judge Vladimir Golitsyn (until 26 March 2023), Professor Alexander Vylegzhanin (as of 30 May 2023)
<b>Status</b>	Ongoing
<b>Further information</b>	<a href="https://pca-cpa.org/en/cases/229/">https://pca-cpa.org/en/cases/229/</a>

These proceedings were instituted on 1 April 2019, when Ukraine served on the Russian Federation a Notification and Statement of Claim<sup>6</sup> under Annex VII of the Convention in respect of claims in connection with the events of 24-25 November 2018 summarized by the Tribunal as follows:

On 24 November 2018, three Ukrainian naval vessels (the *Berdyansk*, the *Nikopol* and the *Yani Kapu*) set sail on a mission with the objective of navigating from the Ukrainian port of Odesa, through the Kerch Strait, to Ukrainian ports in the Sea of Azov. They were confronted by Russian vessels, which claimed that the Russian Territorial Sea on the Black Sea side of the approach to the Kerch Strait was temporarily closed and that by navigating towards the Kerch Strait they would be unlawfully crossing the Russian State border. After the Ukrainian vessels abandoned their attempt

---

<sup>6</sup> The full title of the document is “Notification under Article 287 and Annex VII, Article 1 of [the Convention] and Statement of the Claim and Grounds on which it is Based.”

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 intercepted and arrested the Ukrainian vessels and the servicemen on board. That same day, the Investigations Department of the FSB<sup>2</sup> Directorate for the Republic of Crimea and the City of Sevastopol opened a criminal case and commenced criminal proceedings against the arrested servicemen, and detained the vessels as physical evidence in these criminal prosecutions, on the basis of their having unlawfully crossed the Russian State border.

The Tribunal was constituted on 8 July 2019. On 21 November 2019, the Tribunal held its first procedural meeting at the Peace Palace in The Hague, during which it consulted the Parties in respect of the procedural framework for the arbitration, including the calendar for oral and written pleadings.

Following these discussions, on 22 November 2019, the Tribunal adopted Procedural Order No. 1, including the Rules of Procedure for the arbitration and a procedural calendar.

On 22 May 2020, Ukraine filed its Memorial, in which it claimed that the Russian Federation had violated the immunity of the three Ukrainian naval vessels and also committed other violations of the Convention.

On 22 August 2020, the Russian Federation submitted Preliminary Objections and requested that the Tribunal hear its objections to the Tribunal's jurisdiction in a preliminary phase of the proceedings. The Preliminary Objections were raised on the grounds (i) "that the dispute concerns military activities and is therefore excluded from the Tribunal's jurisdiction pursuant to Article 298(1)(b) of [the Convention]"; (ii) "that [the Convention] does not provide for an applicable immunity"; (iii) "that the Tribunal has no jurisdiction over alleged breaches of the ITLOS Provisional Measures Order and Article 279 of [the Convention]"; and (iv) "that Ukraine has not complied with Article 283 of [the Convention]".

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.

Between 11 and 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 format, with some of the members of the Parties' delegations and some of the members of the Arbitral Tribunal joining in person and others by videoconference. The opening statement made by each Party's Agent was open to the public and webcast on the internet via live-streaming. Transcripts of each Agent's opening statement were published on the PCA website.

On 27 June 2022, the Tribunal issued an Award concerning the preliminary objections of the Russian Federation in which it, unanimously: (i) "Finds that the events of 25 November 2018 until a point in time after the Ukrainian naval vessels left anchorage area No. 471 constitute 'military activities' excluded from the jurisdiction of the Arbitral Tribunal in accordance with Article 298(1)(b) of the Convention;" (ii) "Finds that the events following the arrest of the Ukrainian naval vessels do not constitute 'military activities' excluded from the jurisdiction of the Arbitral Tribunal in accordance with Article 298(1)(b) of the Convention;" (iii) "Decides that the determination of the precise point at which the events ceased to be 'military activities' within the meaning of Article 298(1)(b) of the Convention shall be ruled upon in conjunction with the merits;" (iv) "Rejects the objection that the Arbitral Tribunal has no jurisdiction over alleged breaches of the ITLOS Provisional Measures Order;" (v) "Rejects the objection that Ukraine has not complied with Article 283 of the Convention;" and (vi) decided that the remainder of the Russian Federation's preliminary objections would be ruled upon in conjunction with the merits.

On 20 December 2022 and again on 2 March 2023, upon requests 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 that the Tribunal had joined to the merits phases 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**"). More specifically, the Russian Federation submitted that Professor McRae and Judge Wolfrum had failed to disclose their endorsement of the IDI Declaration, which, in its view, takes a clear stance on the Russian Federation's alleged responsibility for "gross violations of international law".

On 1 December 2023, the three unchallenged Members of the Tribunal, with Judge Gudmundur Eiriksson presiding, issued [Procedural Order No. 7](#) granting Ukraine's request that each party be granted a four-week extension to file its next submission and reserving the week of 27 May 2024 for a hearing.

On 15 December 2023, the three unchallenged Members of the Tribunal, with Judge Gudmundur Eiriksson presiding, issued [Procedural Order No. 8](#), which set out the procedure to be followed for a decision on the challenges to Professor McRae and Judge Wolfrum.

On 6 March 2024, the unchallenged Members of the Tribunal rendered their [Decision on Challenges](#), upholding, by majority, the Challenges to Professor McRae and Judge Wolfrum with Sir Christopher Greenwood [dissenting](#).

## **6. REVIEW PANEL ADMINISTERED DURING THIS REPORTING PERIOD**

### **Review Panel established under the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, PCA Case No. 2023-33**

<b>Commencement date</b>	10 April 2023
<b>Jurisdictional basis</b>	Article 17 and Annex II of the SPRFMO Convention
<b>Review panel</b>	Prof. Bernard H. Oxman, Dr. Erik J. Molenaar, Ms. Olga Sedykh
<b>Status</b>	Concluded
<b>Further information</b>	<a href="https://pca-cpa.org/en/cases/293/">https://pca-cpa.org/en/cases/293/</a>

These proceedings involve a review of a decision of the SPRFMO Commission.

The Convention envisages regional coordination on the management of fish stocks in ocean areas beyond States' maritime boundaries. Coordination of this sort is achieved through regional fisheries

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 also objected to its share in the total allowable catch of *Trachurus murphyi* in 2023 specified in paragraphs 4 and 9 and Tables 1 and 2 of CMM 01-2023.

On 17 May 2023, a Review Panel comprising Professor Bernard H. 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 withdrew 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.

On 29 May 2023, the review panel issued Procedural Directive No. 1.

On 2 June 2023, the People’s Republic of China withdrew its objection to CMM 01-2023.

On 7 June 2023, further to an agreement between the Chairperson of the SPRFMO Commission and the Russian Federation, the review panel rendered its Final Decision of the Review Panel as Comprised of Five Members, deciding, *inter alia*, that the review panel would henceforth be comprised of three members, namely Professor Bernard H. Oxman (Chair), Dr. Erik J. Molenaar, and Ms. Olga Sedykh (“**Review Panel**”).

On the same date, the Review Panel issued its Procedural Directive No. 2.

On 8 June 2023, the Russian Federation and the SPRFMO each filed a written memorandum.

On 14 June 2023, written memoranda were filed by the Republic of Chile, Chinese Taipei, the European Union, New Zealand and the Republic of Peru.

During the Reporting Period, a hearing on the Russian Federation’s objection was held at the Peace Palace in The Hague on 26 June 2023. Delegations from the Republic of Chile, Chinese Taipei and the Russian Federation attended the hearing in person. In addition, delegations from the People’s Republic of China, the Kingdom of Denmark in respect of the Faroe Islands, the Republic of Peru and the SPRFMO attended the hearing remotely.

On 1 July 2023, the Review Panel issued its [Findings and Recommendations](#).

In its Findings and Recommendations, the Review Panel examined each of the grounds for the Russian Federation’s objection. The Review Panel also considered the views of other participants, including Chinese Taipei, the Republic of Chile, the European Union, the SPRFMO, New Zealand and the Republic of Peru.

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 not 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 long duration 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 non-contracting Parties of the SPRFMO. Instead, the Review Panel found that it was possible to find a basis for calculating an alternative catch limit rooted in the SPRFMO Convention that would satisfy the equivalence requirement. As such, the Review Panel recommended a modification of the Russian Federation’s alternative measures that specifies a tonnage limit for the Russian Federation for 2023 that is 15% greater than the 29,543 tonnes allocated to it in Table 1 of CMM 01-2022, namely a tonnage limit of 33,974 tonnes.

## **7. ADDITIONAL RELEVANT PCA ACTIVITIES**

### **7.1. Education and outreach**

PCA lawyers regularly participate in conferences and publish 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. The PCA also gives lectures to students, visiting scholars, legal practitioners, and government representatives. In many of these presentations, the PCA discusses cases that relate to the governance of oceans and the law of the sea.

During the Reporting Period, the PCA organized a side event entitled “Permanent Court of Arbitration: Reflections on the Timor-Leste/Australia Conciliation, five years after the first ever UNCLOS Conciliation” on the occasion of the United Nations International Law Week in New York. Dr. Hab. Marcin Czepelak, Secretary-General of the PCA, delivered remarks during this event. Similarly, during the inaugural PCA Viet Nam Conference, a panel focused on PCA Case No. 2016-10: *Timor Sea Conciliation (Timor-Leste v. Australia)* discussed the process of conciliation and the PCA’s role in providing technical and administrative support in those proceedings.

In addition, Mr. Martin Doe Rodriguez, Deputy Secretary-General and Principal Legal Counsel, delivered lectures on dispute resolution under the Convention at the Arbitration Academy in Paris,

the Hague Academy, the University of Basel, and 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 Foundation Capacity Building and Training Programme. Ms. Goriatcheva also spoke on the Panel on Dispute Settlement Mechanisms under the Convention for Deep Sea Mining Disputes at the European Mining Conference in The Hague. Additionally, PCA Representative in Mauritius and Legal Counsel Ms. Balla Galma Godana presented on inter-state arbitration, including maritime delimitation disputes at the University of Cape Town. Assistant Legal Counsel Ms. Sandra Magalang presented on the PCA’s role in law of the sea cases to ITLOS-Nippon Fellows, as well as to diplomats from ASEAN Member States and the ASEAN Secretariat as part of the Clingendael Institute Law of the Sea course. PCA Senior Legal Counsel and Representative in Singapore, Dr. Tulio Di Giacomo Toledo as well as PCA Legal Counsel and Representative in Viet Nam, Mr. Neil B. Nucup presented on the role of the PCA in conciliation and mediation in climate change-related disputes at the 9<sup>th</sup> Asian Society of International Law Conference held in Bandung.

## **7.2. 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 ocean affairs and the law of the sea. 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. The PCA and ITLOS have undertaken to exchange documents and explore cooperation in areas of mutual concern.

\*\*\*