
EXECUTIVE SUMMARY

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

To date, the PCA has acted as registry in 13 arbitrations brought in accordance with Annex VII of the 1982 United Nations Convention on the Law of the Sea (“Convention”). It has also administered the first conciliation pursuant to Annex V of the Convention, as well as a number of dispute resolution proceedings involving the law of the sea that were not brought under the Convention.

In the period since the PCA’s last contribution to the United Nations Secretary-General’s report on oceans and the law of the sea in June 2017 (“Reporting Period”), the following cases have ended:

- The Arbitration between the Republic of Croatia and the Republic of Slovenia, PCA Case No. 2012-04 (Final Award issued on 29 June 2017);
- The Arctic Sunrise Arbitration (Netherlands v. the Russian Federation), PCA Case No. 2014-02 (Award on Compensation issued on 10 July 2017); and

The PCA has continued to administer the following cases discussed in its last report:

- The Duzgit Integrity Arbitration (Malta v. São Tomé and Príncipe), PCA Case No. 2014-07;
- The “Enrica Lexie” Incident (Italy v. India), PCA Case No. 2015-28; and
- 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.

The above-listed disputes were all instituted under the Convention, other than the arbitration between Croatia and Slovenia, which was brought pursuant to a special agreement between the Parties.

In 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 with regards to an objection by Ecuador to a fisheries conservation and management measure adopted by the Commission of the South Pacific Regional Fisheries Management Organisation.

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

1 For developments after 14 June 2019 and further information about the PCA, including its 2018 Annual Report, see www.pca-cpa.org.
A. INTRODUCTION

The Under-Secretary-General for the Office of Legal Affairs has invited the PCA to contribute to the United Nations Secretary-General’s 2019 report on oceans and the law of the sea. The invitation requests information on the activities that have been undertaken or are ongoing in the implementation of specific provisions of United Nations General Assembly Resolution 73/124 relevant to the PCA. In addition, the invitation requests information on the main recent developments at the PCA in the field of ocean affairs and the law of the sea. The provision of Resolution 73/124 that is most relevant to the PCA is Part IV on the “Peaceful settlement of disputes.”

Section B of this report provides background on the PCA. Section C provides an overview of the PCA’s case activities in relation to the Convention. Section D describes other PCA dispute resolution proceedings involving the law of the sea. Sections E and F contains a case-by-case description of the dispute resolution proceedings administered by the PCA in this Reporting Period. Section G sets out additional relevant activities undertaken by the PCA.

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

B. THE PERMANENT COURT OF ARBITRATION

The Permanent Court of Arbitration is an intergovernmental organization designed to facilitate arbitration and other modes of dispute resolution between States, State entities, intergovernmental organizations and private parties. The PCA is an autonomous institution, governed by the 122 Contracting Parties to one or both of the PCA’s founding conventions: the 1899 and 1907 Conventions for the Pacific Settlement of International Disputes. The PCA is the oldest intergovernmental institution for the resolution of international disputes, and has developed into a modern, multifaceted institution that has evolved in response to the dispute resolution needs of the international community.

The PCA’s caseload continues to grow and it is presently administering 167 cases. These include 3 inter-State arbitrations arising under treaties or special agreements; 108 investment disputes arising under bilateral or multilateral investment treaties; 54 disputes arising under contracts between private parties and States, other State-controlled entities or intergovernmental organizations; and 2 other disputes. 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 International Bureau is the secretariat of the organization and is headed by the PCA Secretary-General. 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 Secretariat has received over 750 appointing authority requests to date. In addition to its work in respect of the resolution of particular disputes, the PCA is a center for scholarship and publication, and a forum for legal discourse.

The International Bureau has its headquarters at the Peace Palace in The Hague, the Netherlands as well as offices in Mauritius and Singapore. The PCA has concluded Host Country Agreements with a number of its Contracting Parties and cooperation arrangements with many arbitral institutions across the globe, enabling it to organize hearings and other activities in those jurisdictions under similar conditions as in the Netherlands. During the Reporting Period, Host Country Agreements were entered into with Ireland, Brazil, Portugal, Uruguay and Singapore, and cooperation agreements were signed with eight arbitral institutions on four continents.
C. THE PCA AND 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.

Article 298 provides for compulsory conciliation under Annex V of the Convention where a State has elected to exclude certain subject-matters from arbitration or judicial settlement. In 2016-2018, the PCA administered the first compulsory conciliation under the Convention: the Timor Sea Conciliation between Timor-Leste and Australia (PCA Case No. 2016-10), which was initiated in April 2016 and concluded with the issuance of the Report and Recommendations of the Conciliation Commission on 9 May 2018.

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) of the Convention, or if the parties have not accepted the same procedure for the settlement of the dispute. Since the Convention came into force in 1994, 13 cases that were submitted to arbitration under Annex VII of the Convention have been administered by the PCA.

The Annex V conciliation and Annex VII arbitrations of this Reporting Period are discussed in further detail in Sections E and F below.

D. OTHER PCA DISPUTE RESOLUTION PROCEEDINGS INVOLVING THE LAW OF THE SEA

i. Other PCA 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: 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); and vessel seizure (The “Carthage” and French Postal Vessel “Manouba” (France/Italy), 1913).

More recently, the Eritrea/Yemen arbitration involved 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. By agreement of the Parties, the PCA acted as registry. Even though Eritrea has never acceded to the Convention, the Arbitral Tribunal concluded in its Award in the Second Stage that the Parties’ arbitration agreement implied Eritrea’s acceptance of the application of provisions of the Convention relevant to maritime delimitation, and in both stages of the proceedings the Awards referred to provisions of the Convention. The Tribunal held that among the relevant elements of customary law incorporated in the Convention, definitions in Articles 5 and 15 could be relied upon to determine that the international maritime boundary between the Parties would be a single all-purpose boundary that should, “as far as practicable, be a median line between the opposite mainland coastlines.”

The PCA has administered a number of other arbitrations brought in accordance with special agreements or treaties other than the Convention, including the arbitration between Croatia and Slovenia described in Section F below.
Support for other flexible dispute settlement mechanisms

The PCA also administers dispute settlement mechanisms other than arbitration in cases related to ocean and maritime affairs that are not brought under the Convention. Examples, such as the review of a decision of the Commission of the Southern Pacific Regional Fisheries Management Organisation conducted in 2013, are included in the PCA’s contribution to the 2015 Secretary-General’s report. A similar review was also conducted in 2018 and is described in Section E below.

The PCA has also helped administer a conciliation between an intergovernmental organization and a non-governmental organization under the UNCITRAL Rules of Conciliation, and a matter initially referred to arbitration under the PCA Optional Rules for Arbitration of Disputes Relating to the Environment and/or Natural Resources was subsequently referred, by party agreement, to conciliation under the PCA Optional Rules for Conciliation of Disputes Relating to the Environment and/or Natural Resources.

E. CONCILIATION AND REVIEW PANEL ADMINISTERED IN THIS RECORDING PERIOD

i. The Timor Sea Conciliation (Timor-Leste v. Australia), PCA Case No. 2016-10

Commencement date 11 April 2016
Jurisdictional basis Annex V to the Convention
Conciliation Commission H.E. Ambassador Peter Taksøe-Jensen (Chairman), Dr. Rosalie Balkin, Judge Abdul G. Koroma, Prof. Donald McRae, Judge Rüdiger Wolfrum
Status Concluded
Further information https://pca-cpa.org/en/cases/132/

On 11 April 2016, pursuant to Article 298 and Annex V of the Convention, Timor-Leste initiated compulsory conciliation proceedings against Australia concerning the maritime boundary between the two countries. This conciliation is the first conciliation under Annex V of the Convention.

The five-member Conciliation Commission was constituted on 25 June 2016. From 29 to 31 August 2016, the Conciliation Commission held a hearing at which the Parties addressed the background to the conciliation and Australia’s objections to competence. By agreement of the Parties, the opening session of the hearing was webcast live and remains available on the PCA’s website. On 19 September 2016, the Conciliation Commission issued its Decision on Competence, finding itself competent to continue the conciliation proceedings.

From 10 to 13 October 2016, the Conciliation Commission held a series of confidential meetings with the Parties’ delegations in Singapore. In the course of those meetings the governments of Timor-Leste and Australia agreed to an integrated package of confidence-building measures intended to facilitate the conciliation process and create the conditions conducive to the achievement of an agreement on permanent maritime boundaries in the Timor Sea. As part of these confidence-building measures, Timor-Leste requested the suspension of proceedings in the two arbitrations it had initiated with Australia under the Timor Sea Treaty (PCA Case No. 2013-16 and PCA Case No. 2015-42).

On 9 January 2017, in continuation of the agreed package of confidence-building measures, the Foreign Ministers of Timor-Leste and Australia and the Conciliation Commission issued a Trilateral Joint

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Statement, noting Timor-Leste’s intention to terminate the Treaty on Certain Maritime Arrangements in the Timor Sea and setting out the Parties’ agreement on the legal consequences of such termination.

From 16 to 20 January 2017, the Conciliation Commission held a series of confidential meetings with the Parties’ delegations in Singapore. At the conclusion of those meetings, as the last step in the agreed package of confidence-building measures, Timor-Leste withdrew its claims under the Timor Sea Treaty. Further confidential meetings were held by the Conciliation Commission with the Parties’ delegations between March and August 2017 to explore their positions and to identify possible areas of agreement.

On 30 August 2017, Timor-Leste and Australia reached an agreement on the central elements of a maritime boundary delimitation between them in the Timor Sea (“30 August 2017 Agreement”). The Parties’ agreement constitutes a package and, in addition to maritime boundaries, addresses the legal status of the Greater Sunrise gas fields in the Timor Sea as well as the establishment of a special regime with the objective of developing the resource and sharing the resulting revenue. As part of the 30 August 2017 Agreement, the Parties also requested that the Conciliation Commission attempt to facilitate the agreement on the development concept for Greater Sunrise.

During the second week of October 2017, further to a series of confidential meetings with the Conciliation Commission in The Hague, an agreement was reached between the Parties on the complete text of a draft treaty as anticipated in the 30 August 2017 Agreement.

The progress made by the Parties on the pathway to the development of the Greater Sunrise gas fields was reviewed during a week of meetings held by the Conciliation Commission in Singapore in November 2017. As part of the Action Plan for engagement regarding the development of the resource, the governments of Timor-Leste and Australia as well as the Greater Sunrise Joint Venture (“Joint Venture”) had engaged in intensive meetings and discussions between September and November 2017, culminating in two trilateral meetings held in November 2017 in Brisbane and Singapore. Furthermore, the Parties commenced engagement with private stakeholders in the Timor Sea regarding the effect of the draft treaty on private interests, as well the transitional arrangements envisaged by the two governments.

During the week of 11 December 2017, the Conciliation Commission held meetings in Singapore with the Parties as well as the Joint Venture. The purpose of these meetings was both to review progress on the pathway to the development of the Greater Sunrise gas fields and to fix a timeframe for the signature of the maritime boundary treaty agreed between the two governments. Having concluded their respective domestic processes, the two governments agreed that they would proceed with signature in early March 2018. Furthermore, having considered the progress made in the trilateral engagement, the Parties agreed that the Commission would engage directly with them and with the Joint Venture to resolve certain outstanding matters and that a decision on the development concept would be taken by 1 March 2018.

From 29 January to 2 February 2018, the Conciliation Commission met with the Parties and the Joint Venture in Sydney and, from 19 to 23 February 2018, the Commission held its final negotiating session with the Parties and the Joint Venture in Kuala Lumpur. In keeping with the action plan arising out of the 30 August 2017 Agreement, the Conciliation Commission presented its conclusions to the two governments, with a view to providing them with an informed basis to take a decision on the development of the shared resource.

On 6 March 2018, the new Maritime Boundaries Treaty between Timor-Leste and Australia was signed in New York in the presence of the Secretary-General of the United Nations, H.E. António Guterres, the Conciliation Commission and representatives of the PCA.

On 9 May 2018, the Conciliation Commission issued its Report and Recommendations in which it noted the successful outcome of the conciliation proceedings and recorded that the Parties had reached
agreement on the delimitation of a maritime boundary between them in the Timor Sea in accordance with the Convention. The Conciliation Commission recommended that the “Parties implement the agreements reached in the course of the conciliation proceedings, including the transitional arrangements pertaining thereto.” The Conciliation Commission also recommended that “the Parties continue their discussions regarding the development of Greater Sunrise with a view to reaching agreement on a concept for the development of the resource.”

The Conciliation Commission commended the Parties “on the manner in which they approached these conciliation proceedings” and outlined the key elements which, in its view, contributed to the successful outcome of the proceedings with regard to the delimitation of maritime boundaries. The Conciliation Commission noted at the outset “the . . . close relationship between the peoples of Timor-Leste and Australia,” as well as the fact that “the Parties’ interests in the Timor Sea were such that it remained possible to envisage a mutually beneficial result meeting both sides’ essential interests.” The Conciliation Commission observed that the matter could “be considered to have been ripe for resolution,” as both Parties, while “strongly committed to upholding their rights, . . . ultimately preferred an amicable solution to the continuation of an unsatisfactory status quo.” The Conciliation Commission further identified the following factors as instrumental to the positive outcome of the proceedings: (i) the efforts throughout the proceedings to build the Parties’ trust in each other, in the Conciliation Commission, and in the process; (ii) the possibility of managing the scope of the proceedings to encompass the elements necessary for a solution; (iii) the Commission’s pro-active efforts to advance ideas and direct the course of the proceedings; and (iv) the informal contacts with the Parties’ representatives and counsel at a variety of different levels.

ii. Review Panel established under the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, PCA Case No. 2018-13

Commencement date 28 March 2018

Jurisdictional basis Article 17 and Annex II of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean

Review Panel Prof. Donald MacKay, Ms. Cecilia Engler, Prof. Erik J. Molenaar

Status Concluded

Further information https://pca-cpa.org/en/cases/156/

These proceedings involved a review of a decision of the Commission of the South Pacific Regional Fisheries Management Organisation (“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 Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (“SPRFMO Convention”), which came into effect on 24 August 2012, established the South Pacific Regional Fisheries Management Organisation 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 28 March 2018, the Republic of Ecuador presented an objection to the Conservation and Management Measure for Trachurus murphyi (“CMM 01-2018”) adopted by the Commission on 3 February 2018, at its sixth meeting in Lima, Peru.
In particular, Ecuador objected to its tonnage and percentage share in the total allowable catch of *Trachurus murphyi* in 2018 as specified in CMM 01-2018, arguing that this measure unjustifiably discriminated in form or in fact against Ecuador and was inconsistent with the SPRFMO Convention, the Convention and the 1995 United Nations Fish Stocks Agreement, including the provisions of these instruments which require consideration of the special requirements of developing coastal States.

On 25 April 2018, a Review Panel was established under Article 17 and Annex II of the SPRFMO Convention, and the PCA was appointed as registry to the Review Panel. The procedure envisaged the participation of all members of the Commission, cooperating non-contracting parties, as well as representatives of the Organisation. Ecuador, Australia, Chile, New Zealand, Peru and the Organisation filed written memoranda.

A hearing was held at the Peace Palace in The Hague on 23 May 2018. Delegations from Ecuador, the Organisation, Peru, Chile, New Zealand, Australia and Chinese Taipei attended the hearing. Oral interventions were made by representatives of Ecuador, the Organisation, Peru, Chile and New Zealand.

On 5 June 2018, the Review Panel issued its Findings and Recommendations.

In its Findings and Recommendations, the Review Panel addressed the procedural validity of the objection, and then went on to examine each of the grounds for Ecuador’s objection. At the outset, the Review Panel considered whether Ecuador’s objection should be dismissed based on procedural invalidity. In particular, the Review Panel noted that in adopting CMM 01-2018 without accepting Ecuador’s amendment, the Organisation decided on a question of substance to which Ecuador had the right to object. The Review Panel further analysed Ecuador’s ground for objection based on the alleged inconsistency of the allocation with the SPRFMO Convention, the Convention and the 1995 United Nations Fish Stocks Agreement. Notably, Ecuador invoked several provisions of these conventions imposing the consideration of the special requirements of developing coastal States. The Review Panel acknowledged that the decision on the allocation would be inconsistent with the abovementioned conventions if it determined that the Commission acted outside of its wide margin of discretion, such as by basing its decision on only one of the allocation criteria contained in the SPRFMO Convention. However, the Review Panel considered that such an argument was not supported on the material available to it, and that Ecuador had not otherwise substantiated its claim of inconsistency. Finally, the Review Panel assessed whether CMM 01-2018 unjustifiably discriminated in form or in fact against Ecuador in breach of Article 17(2)(c) of the SPRFMO Convention, finding no evidence of such discrimination.

Having found that CMM 01-2018 was not inconsistent with the abovementioned conventions and that it did not unjustifiably discriminate against Ecuador, the Review Panel further assessed whether the alternative measures proposed by Ecuador were equivalent in effect to the objected decision as required by the SPRFMO Convention. Such proposed alternative measures provided for an increased catch allocation by drawing on what it termed the fishing “reserve”. After clarifying that the purpose of the “reserve” was to account for catch in areas not falling within the applicable area of the SPRFMO Convention, the Review Panel concluded that the alternative measure proposed by Ecuador is not equivalent in effect to CMM 01-2018. More specifically, the Review Panel found that increasing Ecuador’s allocation for the high seas would result in an increase in the total allowable catch to the detriment of other coastal States. The Review Panel also rejected the assertion made by several participants in the proceedings that it is beyond the competence of the Review Panel to recommend anything that may alter the total allowable catch or the allocations, or otherwise adversely affect the rights and interests of other members or cooperating non-contracting parties. It considered that the equivalency test for alternative measures should not preclude the right of a member of the Commission to object to a decision and be granted relief, even in respect of allocation decisions.

Finally, the Review Panel suggested possible ways forward as to how Ecuador’s aspirations in developing a future high seas fishery for *Trachurus murphyi* could be addressed. By way of example,
the Review Panel invited the members of the Commission to take part in more deliberative and specific discussions as part of the decision-making process. It also noted that several participants had expressed that Ecuador’s aspirations could be addressed through proposed alternative allocation mechanisms aimed at promoting increased utilisation of allocations and increasing the allocations of those with no or very low allocations.

F. RELEVANT PCA ARBITRATIONS ADMINISTERED IN THIS REPORTING PERIOD

i. Arbitration between the Republic of Croatia and the Republic of Slovenia, PCA Case No. 2012-04

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<th>Commencement date</th>
<th>2012</th>
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<td>Jurisdictional basis</td>
<td>Special Agreement</td>
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<tr>
<td>Tribunal members</td>
<td>Judge Gilbert Guillaume (Chair), H.E. Ambassador Rolf Einar Fife, Prof. Vaughan Lowe QC, Prof. Nicolas Michel, Judge Bruno Simma</td>
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<tr>
<td>Status</td>
<td>Concluded</td>
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<td>Further information</td>
<td><a href="https://pca-cpa.org/en/cases/3/">https://pca-cpa.org/en/cases/3/</a></td>
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On 4 November 2009, the Prime Ministers of Croatia and Slovenia signed an Arbitration Agreement, by which Croatia and Slovenia submitted their territorial and maritime dispute to arbitration. The Arbitration Agreement was subsequently ratified by Croatia and Slovenia in accordance with their respective constitutional procedures.

Article 3(1) of the Parties’ Arbitration Agreement states: “The Arbitral Tribunal shall determine (a) the course of the maritime and land boundary between the Republic of Slovenia and the Republic of Croatia; (b) Slovenia’s junction to the High Sea; (c) the regime for the use of the relevant maritime areas.” Article 4 of the Agreement states: “The Arbitral Tribunal shall apply (a) the rules and principles of international law for the determinations referred to in Article 3(1)(a); (b) international law, equity and the principle of good neighbourly relations in order to achieve a fair and just result by taking into account all relevant circumstances for the determinations referred to in Article 3(1)(b) and (c).”

The Tribunal was constituted on 31 January 2012. The first procedural meeting was held on 13 April 2012, following which the Parties exchanged three rounds of extensive written submissions, which were accompanied by over two thousand documentary exhibits and maps. A two-week hearing at the Peace Palace in The Hague was held in June 2014.

On 22 July 2015, Serbian and Croatian newspapers reported that telephone conversations between one of the Agents designated by Slovenia and the arbitrator originally appointed by Slovenia had been intercepted. On 31 July 2015, Croatia informed the Tribunal that, pursuant to Articles 60 and 65 of the Vienna Convention on the Law of Treaties, Croatia had notified Slovenia of its intention to terminate the Arbitration Agreement. On 30 July 2015, Croatia ceased to apply the Arbitration Agreement. On 13 August 2015, Slovenia informed the Tribunal that Slovenia had objected to Croatia’s purported unilateral termination of the Arbitration Agreement and that, in Slovenia’s view, the Tribunal had the power and the duty to continue the proceedings.

On 25 September 2015, following the resignation of the arbitrators appointed by Croatia and Slovenia, the Tribunal was recomposed in accordance with Article 2, paragraph 2 of the Arbitration Agreement. By letter dated 1 December 2015, the Tribunal invited the two governments to make further submissions “concerning the legal implications of the matters set out in Croatia’s letters of 24 July 2015 and 31 July 2015” and fixed the procedural calendar for additional written submissions in this regard.
In accordance with that procedural calendar, Slovenia filed a written submission on 26 February 2016; Croatia did not file any written submission. On 17 March 2016, the Tribunal held a one-day hearing.

On 30 June 2016, the Tribunal issued its Partial Award, where it held that by engaging in *ex parte* contacts with the arbitrator originally appointed by it, Slovenia had acted in violation of provisions of the Arbitration Agreement. However, the Tribunal held that these violations were not of such a nature as to entitle Croatia to terminate the Arbitration Agreement, nor did they affect the Tribunal’s ability, in its new composition, to render a final award independently and impartially.

On 29 March 2017, the Tribunal informed the representatives of the Parties that it was satisfied that there was no need for any further submissions from the Parties in respect of the merits of the case and that, for this reason, it declared the hearings closed in accordance with the applicable rules of procedure.

On 29 June 2017, the Tribunal issued a unanimous Final Award, which was delivered by the Tribunal at a public sitting at the Peace Palace, The Hague.

First, with respect to the land boundary, the Tribunal observed that it must fix that boundary in accordance with international law and that the Parties had agreed that the Tribunal shall apply the principle of *uti possidetis*, according to which the present boundary is identical to the previous boundaries between the Republics of Yugoslavia as on the date of independence. The Tribunal further noted that 90% of the boundary had already been agreed upon by the Parties. Those undisputed areas were identified by both Parties as those in which the cadastral limits of neighbouring Croatian and Slovenian districts coincided and were “aligned” at the time of independence in 1991. The Tribunal inferred from this practice that the Parties were agreed that, in principle, the cadastral limits represented the boundaries of the Republics. Accordingly, the Tribunal considered those cadastral limits as a *prima facie* indication of the existing titles to the boundary. However, the Tribunal examined in respect of each of the disputed areas whether there were reasons for applying other criteria. Where no title could be established, the Tribunal based its decision on *effectivités* pleaded by the Parties, *i.e.*, the conduct of administrative authorities as proof of effective exercise of territorial jurisdiction.

Second, with respect to the Bay called “Bay of Piran” by Slovenia and “Bay of Savudrija/Piran” by Croatia, the Tribunal considered that that Bay was comprised of internal waters prior to the dissolution of Yugoslavia and remained so after 1991. In the absence of any provision on the delimitation of internal waters in the Convention, the Tribunal determined that such delimitations were to be made on the basis of the principles applicable to the delimitation of land territories. Thus, in this case, the delimitation had to be made on the basis of *uti possidetis*. Given the Parties’ agreement that there was no formal division of the Bay between the Republics prior to the dissolution of Yugoslavia and that no condominium was established, the Tribunal proceeded to the delimitation on the basis of the *effectivités* at the date of the independence. The Tribunal considered the *effectivités* of Croatia and Slovenia, in particular with respect to fisheries regulation and police patrols. On the basis of those *effectivités*, it decided to fix the boundary along a line situated between the lines advanced by the Parties. Such delimitation leaves the larger part of the Bay to Slovenia.

Third, with respect to the Parties’ maritime boundary in the territorial sea, the Tribunal considered whether the equidistance line should be adopted or whether “it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith” and to adjust the equidistance line accordingly. In light of the particular configuration of Cape Savudrija, the Tribunal determined that the equidistance line must be adjusted in favour of Slovenia.

Fourth, with respect to the determination of Slovenia’s “junction to the High Sea,” the Tribunal first observed that there is no area anywhere in the Mediterranean Sea in which the “High Sea” regime *stricto sensu* would be applicable if every Mediterranean State claimed the exclusive economic zone to which it is entitled. Therefore, the Tribunal considered that the term “High Sea” can be understood to mean
the area in which freedoms of communication embodied both in Articles 58 and 87 of the Convention are established. Thus, in this case “High Sea” must be understood as referring to the areas lying beyond the territorial seas. Further, the Tribunal considered that in this case, the term junction signified the physical location of a connection between the territorial sea of Slovenia and an area beyond the territorial seas of Croatia and Italy. The Tribunal observed that no part of the boundary of the territorial sea of Slovenia directly abuts upon an area of “High Sea” as previously defined. The Tribunal therefore decided that the junction must be established by creating an area between the Slovenian territorial sea and the “High Sea” in which freedom of communications between those two zones is guaranteed. For those reasons, the Tribunal created a “Junction Area” in Croatia’s territorial sea immediately adjacent to the boundary laid down by the Treaty of Osimo. The “Junction Area” is approximately 2.5 nautical miles wide.

Finally, with respect to the determination of the regime for the use of the relevant maritime areas, the Tribunal emphasized the need to guarantee both the integrity of Croatia’s territorial sea and Slovenia’s uninterrupted and uninterruptible access from and to the “High Sea”. To that end, the Tribunal established in the “Junction Area” a special usage regime different from any regime established under the Convention, whether in territorial seas or international straits. Under that regime, (i) freedom of communication shall apply to all ships and aircraft, civil and military, of all flags or States of registration, equally and without discrimination on grounds of nationality, for the purposes of access to and from Slovenia, including its territorial sea and its airspace; (ii) the freedom of communication shall consist in the freedoms of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines; (iii) the freedom of communication shall not be conditioned upon any criterion of innocence, shall not be suspendable under any circumstances, and shall not be subject to any duty of submarine vessels to navigate on the surface or to any coastal State controls or requirements other than those permitted under the legal regime of the exclusive economic zone established by the Convention; (iv) the laying of submarine cables and pipelines shall be subject to the conditions set out in Article 79 of the Convention; (v) the freedom of communication shall not include the right to explore, exploit, conserve or manage the natural resources, whether living or non-living, of the waters or the seabed or the subsoil in the “Junction Area”, nor shall it include the right to establish and use artificial islands, installations or structures, or the right to engage in marine scientific research, or the right to take measures for the protection or preservation of the marine environment; (vi) ships and aircraft exercising the freedom of communication shall not be subject to boarding, arrest, detention, diversion or any other form of interference by Croatia while in the “Junction Area”, but Croatia shall remain entitled to adopt laws and regulations applicable to non-Croatian ships and aircraft in the “Junction Area”, giving effect to the generally accepted international standards in accordance with the Convention; and (vii) Croatia shall retain the right in the “Junction Area” to respond to a request made by the master of a ship or by a diplomatic agent or consular officer of the flag State for the assistance of the Croatian authorities and also certain exceptional rights embodied in the Convention in respect of maritime casualties.

The details of the boundary fixed in the Final Award, including maps, are set out in a press release available here.

ii. Arctic Sunrise Arbitration (Netherlands v. the Russian Federation), PCA Case No. 2014-02

Commencement date 4 October 2013
Jurisdictional basis Article 287 and Annex VII to the Convention
Tribunal members Judge Thomas A. Mensah (President), Mr. Henry Burmester QC, Prof. Alfred H.A. Soons, Prof. Janusz Symonides, Dr. Alberto Székely
Status Concluded
Further information https://pca-cpa.org/en/cases/21/
The Kingdom of the Netherlands instituted these proceedings on 4 October 2013 with respect to a dispute concerning the boarding and detention of the vessel *Arctic Sunrise* in the exclusive economic zone of the Russian Federation, and the detention of persons on board the vessel by Russian authorities.

Pending the constitution of the Arbitral Tribunal, the Netherlands applied for provisional measures from the International Tribunal for the Law of the Sea ("ITLOS"), which on 22 November 2013 ordered that the vessel and all persons detained in connection with the dispute be released and allowed to leave Russian jurisdiction upon posting of a bond.

The Arbitral Tribunal was constituted on 19 January 2014.

By Notes Verbales to the PCA dated 22 October 2013 and 27 February 2014, Russia indicated its "refusal to take part in this arbitration." In its Rules of Procedure dated 17 March 2014, the Tribunal affirmed Russia’s right to fully participate at any stage of the arbitration, and reserved its own authority to pose questions to the Parties regarding “specific issues which the Arbitral Tribunal considers have not been canvassed, or have been inadequately canvassed, in the pleadings submitted” by the Netherlands.

On 28 November 2014, the Tribunal took note of the fact that Russia had not submitted a Counter-Memorial and requested further written argument from the Netherlands on certain issues raised in its Memorial. After inviting comments from the Parties regarding a request from Greenpeace International to file an *amicus curiae* submission in the case, the Tribunal denied this request on 8 October 2014.

Following its determination that Russia’s Note Verbale dated 22 October 2013 constituted a plea concerning the Tribunal’s jurisdiction, the Tribunal issued an Award on Jurisdiction on 26 November 2014. The Tribunal unanimously held that Russia’s declaration upon ratifying the Convention did not exclude this dispute from compulsory dispute settlement procedures. Having dismissed the preliminary objections, the Tribunal held a hearing on the remaining issues in dispute on 10 and 11 February 2015 in Vienna, which Russia did not attend.

During the hearing, the Netherlands presented fact witnesses for examination and answered questions from the Tribunal. The Netherlands subsequently filed its full and final written responses to the Tribunal’s questions.

The Tribunal issued its unanimous Award on 14 August 2015. It affirmed its jurisdiction over all the claims submitted by the Netherlands, all of which it found to be admissible. It found that by boarding, investigating, inspecting, arresting, detaining and seizing the *Arctic Sunrise* without the prior consent of the Netherlands, and by arresting, detaining and initiating judicial proceedings against the persons on board the vessel, Russia had breached obligations owed by it to the Netherlands as the flag State under Articles 56(2), 58(1), 58(2), 87(1)(a) and 92(1) of the Convention. The Tribunal also found that, by failing to comply with the ITLOS Order, Russia had breached its obligations to the Netherlands under Articles 290(6) and 296(1) of the Convention. In addition, the Tribunal found that, by failing to pay the deposits requested by it in these proceedings, Russia had breached its obligations under Part XV and Article 300 of the Convention.

The Tribunal held that, as a result of these breaches, the Netherlands was entitled to compensation (with interest) for material damage to the *Arctic Sunrise*, material and non-material damage to the persons on board the vessel, and the costs incurred by the Netherlands in connection with the issuance of a bank guarantee pursuant to the ITLOS Order. The Tribunal also ordered Russia to return objects seized from the *Arctic Sunrise* and the persons aboard and, failing their timely restitution, to compensate the Netherlands for their value. Finally, the Tribunal ordered Russia to immediately reimburse Russia’s share of the deposits paid on its behalf by the Netherlands.
In its Award on Compensation dated 10 July 2017, the Tribunal unanimously determined the quantum of compensation owed by Russia to the Netherlands.

On 17 May 2019, the Netherlands and Russia released a joint statement declaring that they have “come to the full and final settlement of any and all mutual claims arising out of or in connection with any events linked in any respect to the presence of the ‘Arctic Sunrise’, the ‘Ladoga’ and the ‘Prirazlomnaya’ platform in September 2013 in the Exclusive Economic Zone (EEZ) of the Russian Federation.”

iii. The Duzgit Integrity Arbitration (Malta v. São Tomé and Príncipe), PCA Case No. 2014-07

<table>
<thead>
<tr>
<th>Commencement date</th>
<th>22 October 2013</th>
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<td>Jurisdictional basis</td>
<td>Article 287 and Annex VII to the Convention</td>
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<tr>
<td>Tribunal members</td>
<td>Prof. Alfred H.A. Soons (President), Judge James Kateka, Prof. Tullio Treves</td>
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<td>Further information</td>
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The Republic of Malta instituted these proceedings with respect to a dispute concerning the arrest by São Tomé of a Maltese flagged vessel – the Duzgit Integrity – on 15 March 2013 when it attempted to undertake a ship-to-ship (“STS”) cargo transfer in São Tomé’s archipelagic waters, and the subsequent measures taken by São Tomé in relation to the vessel, its master, cargo, owner and charterer. The case marks the first instance in which disputing parties have agreed to apply Article 3 of Annex VII to the Convention mutatis mutandis to the constitution of a three-member Arbitral Tribunal.

The Tribunal was constituted on 13 March 2014. After a full exchange of written pleadings, on 23 and 24 February 2016, a hearing was held at the Peace Palace, The Hague. The hearing pertained to all issues of jurisdiction, admissibility, merits and any entitlement to reparation. São Tomé had objected to jurisdiction on the grounds that the dispute did not concern the interpretation or application of the Convention. São Tomé had also contended that Malta’s claims were not admissible on the grounds that: (i) Malta had failed to fulfil the Convention’s requirement with respect to the exhaustion of local remedies; (ii) Malta had not sufficiently specified the grounds on which several of its claims were based; and (iii) Malta had failed to fulfil the Convention’s requirement with respect to exchanging views regarding settlement of the dispute before resorting to arbitration. In addition, São Tomé had contended that Malta’s claims for damages suffered by the owner of the Duzgit Integrity were not admissible as they were the object of a settlement agreement. Malta disputed all of São Tomé’s objections regarding jurisdiction and admissibility.

With respect to the merits of the dispute, Malta had claimed, inter alia, that the measures taken by São Tomé violated Articles 2(3) and 25 of the Convention, which relate to the exercise of a State’s sovereignty over its territorial sea, and Article 49(3) of the Convention, which relates to the exercise of a State’s sovereignty over its archipelagic waters. Malta had also claimed that São Tomé breached Articles 192, 194 and 225 of the Convention, which relate to preservation of the marine environment, when São Tomé undertook a subsequent transfer of the vessel’s cargo. Malta had also invoked in

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relation to all of its claims Article 300 of the Convention which imposes upon States a duty of good faith and prohibits the abuse of rights. São Tomé opposed all of Malta’s claims.

On 5 September 2016, the Tribunal issued its Award, finding that it had jurisdiction over the dispute and that Malta’s claims were admissible. The Tribunal determined that Article 49 of the Convention was applicable (rather than Articles 22(3) and 25) because the Duzgit Integrity was located in the archipelagic waters of São Tomé at the time of its arrest. On the facts, the Tribunal found that the Duzgit Integrity did not have the prior authorization that was required under São Tomé’s domestic law to undertake the intended STS transfer. The Tribunal also considered that the master of the Duzgit Integrity had indicated repeatedly his willingness to move outside São Tomé’s territorial sea to make the transfer. The Tribunal noted that, under international law, enforcement measures taken by a coastal State in response to activity within its archipelagic waters are subject to the requirement of reasonableness, which encompasses the general principles of necessity and proportionality.

The Tribunal found, unanimously, that the measures taken by São Tomé on 15 March 2013 – detaining the vessel, requesting the master to come onshore to explain the circumstances, and imposing the fine by the Maritime and Port Institute – fell well within the exercise by São Tomé of its law enforcement jurisdiction. However, the Tribunal found, by majority, that the other penalties imposed by São Tomé – the prolonged detention of the master and vessel, the monetary sanctions, and the confiscation of the entire cargo – when considered together, could not be regarded as proportional when considering the original offence or the interest of ensuring respect for São Tomé’s sovereignty. The Tribunal found, by majority, that the disproportionality was such that it rendered the cumulative effect of the sanctions incompatible with the responsibilities of a State exercising sovereignty on the basis of Article 49 of the Convention. Consequently, the Tribunal held, by majority, that Malta was entitled to claim reparation regarding certain heads of claim in a later phase of the arbitration. Having determined a breach of Article 49(3) of the Convention, the Tribunal saw no need to determine a violation of Article 300 of the Convention.

The Tribunal also dismissed Malta’s claims under Articles 192, 194 and 225 of the Convention finding that, based on the evidence before it, Malta had not persuaded the Tribunal that São Tomé had exposed its marine environment to an unreasonable risk. As regards the proceedings to date, the Tribunal ordered that its expenses be borne in equal shares by the Parties and that the Parties bear their own legal costs.

Judge Kateka attached a dissenting opinion in which he disagreed with the majority’s finding that São Tomé had violated Article 49 of the Convention. Judge Kateka stated, inter alia, that each penalty imposed by São Tomé should be considered on its own merit, and in the context of its particular circumstances and the gravity of the violation.

Malta is now entitled to proceed to claim reparations in a further phase, which is currently underway.

iv. The “Enrica Lexie” Incident (Republic of Italy v. Republic of India), PCA Case No. 2015-28

Commencement date 26 June 2015
Jurisdictional basis Article 287 and Annex VII to the Convention
Tribunal members Judge Vladimir Golitsyn (President), Prof. Francesco Francioni, Judge Jin-Hyun Paik, Dr. Pemmaraju Sreenivasa Rao, Judge Patrick L. Robinson
Status Ongoing
Further information https://pca-cpa.org/en/cases/117/

These proceedings were instituted on 26 June 2015, when Italy served on India a “Notification under Article 287 and Annex VII, Article 1 of UNCLOS and Statement of Claim and Grounds on Which it is Based.”
According to Italy, the Parties’ dispute arises from an incident that occurred on 15 February 2012 approximately 20.5 nautical miles off the coast of India involving the MV Enrica Lexie, an oil tanker flying the Italian flag, and India’s subsequent exercise of criminal jurisdiction over the incident and over two Italian marines from the Italian Navy, Chief Master Sergeant Massimiliano Latorre and Sergeant Salvatore Girone. According to India, the “incident” in question concerns the killing of two Indian fishermen on board an Indian vessel named the St. Antony, and the subsequent exercise of jurisdiction by India. It is alleged that the fishermen were killed by the two Italian marines stationed on the Enrica Lexie.

The Tribunal was constituted on 30 September 2015. On 11 December 2015, Italy filed a request for provisional measures. On 18 January 2016, the Tribunal held a first procedural meeting at the Peace Palace, The Hague. India submitted comments on Italy’s request for provisional measures on 26 February 2016. On 30 and 31 March 2016, a public hearing on provisional measures was held at the Peace Palace, The Hague.

On 29 April 2016, the Tribunal adopted its Order in respect of Italy’s request for the prescription of provisional measures. The Tribunal unanimously: (i) prescribed that Italy and India shall cooperate to achieve a relaxation of the bail conditions of Sergeant Girone; (ii) confirmed Italy’s obligation to return Sergeant Girone to India in case the Tribunal finds that India has jurisdiction over him; and (iii) decided that Italy and India shall each report to the Tribunal on compliance with its provisional measures.

Between September 2016 and March 2018, the Parties exchanged several rounds of written pleadings on the Tribunal’s jurisdiction and the merits of the case. In its pleadings, India raised objections to the jurisdiction of the Tribunal and the admissibility of Italy’s claims, and presented counter-claims.

On 11 October 2018, the member of the Tribunal originally appointed by India, Judge Patibandla Chandrasekhara Rao, passed away. In accordance with Article 6 of the Rules of Procedure, on 26 November 2018, India appointed Dr. Pemmaraju Sreenivasa Rao to succeed Judge Rao on the Tribunal.

Due to the illness of Judge Rao, the hearing, originally scheduled to take place in the autumn of 2018, was postponed. On 19 December 2018, the Tribunal announced that the hearing will be held from 8 July to 20 July 2019 at the Peace Palace in The Hague to address the jurisdiction of the Tribunal as well as the merits of Italy’s claims and India’s counter-claims.

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

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

On 16 September 2016, Ukraine served on the Russian Federation a “Notification under Article 287 and Annex VII, Article 1 of [the Convention] and Statement of the Claim and Grounds on which it is Based,” referring to a “dispute concerning coastal state rights in the Black Sea, Sea of Azov, and Kerch Strait.”
The Arbitral 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, following which, on 21 May 2018, the Russian Federation filed Preliminary Objections requesting that the Tribunal hear its objections to the Tribunal’s jurisdiction in a preliminary phase of the proceedings, and adjudge and declare that the Tribunal is without jurisdiction in respect of this dispute.

On 20 August 2018, in its Procedural Order No. 3, the Tribunal decided that it would examine the Preliminary Objections of the Russian Federation in a preliminary phase of the proceedings. The Tribunal further noted that if its determines after the closure of the preliminary phase of the proceedings that there are Preliminary Objections that do not possess an exclusively preliminary character, then such matters shall be reserved for consideration and decision in the context of the proceedings on the merits.

Pursuant to the timetable set by the Tribunal on 27 August 2018, the Parties then submitted written pleadings concerning the Preliminary Objections of the Russian Federation. A hearing concerning the Preliminary Objections commenced on 10 June 2019 at the Peace Palace, The Hague. The opening statements made by the Agents of both Parties on 10 and 11 June 2019 were open to the public and live-streamed on the website of the PCA. In accordance with Article 27(2) of the Rules of Procedure, the Parties’ written pleadings on the Preliminary Objections, as well as any non-confidential documentary evidence related thereto, were published on the PCA’s website on 10 June 2019.

G. ADDITIONAL RELEVANT PCA ACTIVITIES

i. Education and outreach

The PCA regularly participates in conferences and publishes 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. For example, in 2017, 2018 and 2019, the PCA Deputy Secretary-General, Brooks W. Daly, presented lectures on the Convention and related cases for the Advanced LLM in Public International Law at Leiden University, the LLM in International Dispute Settlement (MIDS) at the Geneva Centre for International Dispute Settlement, as well as graduate programs at Georgetown Law. During the Reporting Period, PCA Senior Legal Counsels Judith Levine and Garth L. Schofield, have also published the book chapter “Navigating Uncharted Procedural Waters in a Rising Sea of Cases at the Permanent Court of Arbitration” in Stephen Minas, H. Jordan Diamond & Holly Doremus (eds.), Stress Testing the Law of the Sea: Dispute Resolution, Disasters, and Emerging Challenges.

Given the increasing number of PCA-administered disputes involving sustainable development and environmental law, including under the Convention, the PCA regularly engages in education and outreach in relation to climate change related disputes. Following from the PCA’s participation in COP21 and COP22, the PCA sent a delegation to the 23rd meeting of the Conference of Parties to the UN Framework Convention on Climate Change (“UNFCCC”) held in November 2017, in Bonn, Germany. In this context, the PCA co-hosted an Official Side Event on the theme: “Supporting the UNFCCC and the Paris Agreement through International Dispute Settlement.” Similarly, the PCA sent a delegation to COP24, the 24th meeting of the Conference of Parties to the UNFCCC held in December 2018, in Katowice, Poland. On 6 December 2018, the PCA co-hosted an Official Side Event. The event was held as part of the Business and Industry Day and included a panel on “Promoting and Protecting Climate Change Investment.”
The PCA gives guest 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 presented lectures to students from various universities, including the Malmo Maritime University and fellows from ITLOS, on issues relating to law of the sea and maritime arbitration. Presentations were recently also given to officials, diplomats and legal professionals from the African Union, Belarus, Bangladesh, China, France, Indonesia, Jordan, Mexico, Russia, Pakistan, Saudi Arabia, Sri Lanka, Tunisia and Turkey, as well as an ASEAN delegation.

ii. 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 maritime and ocean affairs. 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.

The PCA was represented, as observer, at the twenty-seventh Meeting of the States Parties to the Convention, held in New York from 12 to 16 June 2017. On 14 June 2017, PCA Senior Legal Counsel Dirk Pulkowski addressed the States Parties at a side event regarding the “Choice of Procedure under Article 287 of the United Nations Convention on the Law of the Sea.” This year, Senior Legal Counsel Evgeniya Goriatcheva will attend the twenty-ninth Meeting of the States Parties to the Convention to be held at the United Nations Headquarters in New York from 17 to 19 June 2019.