PRESS RELEASE

DISPUTE CONCERNING COASTAL STATE RIGHTS IN THE BLACK SEA, SEA OF AZOV, AND KERCH STRAIT (UKRAINE V. THE RUSSIAN FEDERATION)

THE HAGUE, 15 JUNE 2026

Publication of Award

In an arbitration under Annex VII to the United Nations Convention on the Law of the Sea ("UNCLOS" or the "Convention") concerning coastal State rights in the Black Sea, Sea of Azov, and Kerch Strait, an Award has been published on the case repository of the Permanent Court of Arbitration ("PCA"). The PCA acts as registry for the proceedings.

The Arbitral Tribunal had issued the Award on 22 April 2026. Pursuant to Procedural Order No. 2, prior to the publication of the Award, the Parties had 21 days to consider whether any part of the award should be designated as containing "confidential information." The published version of the Award has been appropriately redacted in accordance with Procedural Order No. 2.

The five-member Arbitral Tribunal is chaired by Judge Jin-Hyun Paik as President (a national of the Republic of Korea). The other members are Judge Boualem Bouguetaia (Algeria), Judge Alonso Gómez-Robledo (Mexico), Professor Alexander Vylegzhanin (Russian Federation), and Professor Vaughan Lowe KC (United Kingdom). Professor Lowe was appointed by Ukraine. Professor Vylegzhanin was appointed by the Russian Federation. Judges Paik, Bouguetaia, and Gómez-Robledo were appointed in accordance with the procedure set out in Article 3, subparagraph (d), of Annex VII to UNCLOS.

The Arbitral Tribunal originally included Judge Vladimir Golitsyn, who served as arbitrator until his passing on 26 March 2023. He was succeeded by Professor Vylegzhanin on 30 May 2023.

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Background on the Permanent Court of Arbitration

The Permanent Court of Arbitration is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 128 Contracting Parties. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties. The PCA's International Bureau is currently administering 7 inter-state arbitrations, 1 other inter-state proceeding, 90 arbitrations arising under bilateral or multilateral investment treaties or national investment laws, 101 cases arising under contracts involving a State or other public entity, and 11 other proceedings. More information about the PCA can be found at www.pca-cpa.org.

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SUMMARY OF THE AWARD

A. Procedural Background (paras. 1-109)

The arbitration was instituted on 16 September 2016, when Ukraine served on the Russian Federation a Notification and Statement of Claim[1] under Annex VII to UNCLOS. The Notification and Statement of Claim refers to a "dispute concerning coastal state rights in the Black Sea, Sea of Azov, and Kerch Strait."

Following the issuance of the Award Concerning the Preliminary Objections of the Russian Federation on 21 February 2020, the Parties engaged in the two rounds of written pleadings.

Upon completion of the written phase, the Arbitral Tribunal held a hearing concerning the merits and remaining issues of jurisdiction and admissibility from 23 September to 5 October 2024 at the Peace Palace in The Hague.

The Parties' written pleadings, as well as the opening and closing statements delivered by the Agents at the hearing, are publicly available on the PCA Case Repository.

B. Jurisdiction (paras. 110-419)

The Arbitral Tribunal first addresses the Russian Federation's three general objections to its jurisdiction, namely:

First, according to the Russian Federation, because the Sea of Azov and the Kerch Strait have long been subject to historic title, Ukraine's claims regarding the activities carried out in these waters are excluded from the jurisdiction of the Arbitral Tribunal by the declarations made by the Parties under Article 298, paragraph 1(a)(i), of the Convention.

Second, in the alternative, the Russian Federation argues that since the Sea of Azov and the Kerch Strait have remained internal waters following the dissolution of the Union of Soviet Socialist Republics ("Soviet Union" or "USSR"), and "[s]ince UNCLOS does not regulate, except residually, the regime applicable to internal waters, disputes relating to certain activities in such waters do not concern 'the interpretation or application of [the] Convention' within the meaning of Article 288(1)."

Third, the Russian Federation submits that, in light of change in circumstances after 30 September 2022, the Arbitral Tribunal has no jurisdiction over Ukraine's claims relating to the Sea of Azov and the Kerch Strait due to the new sovereignty dispute over the Donetsk, Kherson, and Zaporozhye regions.

First General Objection (paras. 290-332)

With respect to the Russian Federation's first general objection, the Arbitral Tribunal first finds that the declarations made by the Parties under Article 298, paragraph 1(a)(i), of the Convention do not preclude it from determining whether the Sea of Azov and the Kerch Strait constitute a historic bay or are subject to historic title for the purposes of that Article.

The Arbitral Tribunal considers that, although the Russian Empire and the Soviet Union exercised sovereignty over the Sea of Azov and Kerch Strait, the evidence presented by the Parties does not clearly establish that such sovereignty was exercised "either on a 'legal' basis as a juridical bay or on the basis of historical title" (para. 314).

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[1] 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".

The Arbitral Tribunal considers further that the concept of juridical bays existed before 1958, that Soviet legislation after 1960, in particular Declaration No. 4450, treated the Sea of Azov and the Kerch Strait "not as a historic bay or internal waters subject to historic title, but rather as internal waters that could be justified as an exercise of the rights set out in Articles 4 (Straight Baselines) or 7 (Bays) of the 1958 Geneva Convention" (para. 323), and that neither the 2003 Azov/Kerch Cooperation Treaty nor other materials conclusively establish "the origin or basis of the internal waters status of the Sea of Azov and the Kerch Strait" (para. 326).

The Arbitral Tribunal thus cannot accept the Russian Federation's argument that the Sea of Azov and the Kerch Strait constituted a historic bay or were subject to historic title. Accordingly, the Arbitral Tribunal rejects the Russian Federation's first general objection.

Second General Objection (paras. 333-406)

The Arbitral Tribunal considers the Russian Federation's second general objection that the internal waters status of the Sea of Azov and the Kerch Strait continued after the dissolution of the Soviet Union and that, because the Convention does not regulate internal waters, disputes concerning activities in the Sea of Azov and the Kerch Strait do not qualify as disputes concerning its interpretation or application.

Referring to the decisions in *Gulf of Fonseca* and *Croatia/Slovenia*, the Arbitral Tribunal is of the view that "the internal waters status of a bay bordering a predecessor State may, in certain circumstances, pass to successor States, even where the bay becomes bordered by more than one State" (para. 347). The Arbitral Tribunal further notes that it is not persuaded that "there is a well-established 'general rule' or 'strong norm' against the existence of a pluri-State bay with internal waters" (para. 355). In the Arbitral Tribunal's view, the positions of the littoral States are significant in recognizing "the existence of a pluri-State bay with the character of internal waters, particularly in the context of State succession" (para. 361).

The Arbitral Tribunal then turns to the question of whether there was any agreement between the Parties regarding the legal status of the Sea of Azov and the Kerch Strait following the dissolution of the Soviet Union. In this regard, it examines the 2003 Azov/Kerch Cooperation Treaty, the bilateral negotiations leading up to its conclusion, and the conduct of the Parties vis-à-vis each other and vis-à-vis third States in those waters after 1991.

Based on this examination, the Arbitral Tribunal concludes that the internal waters status of the Sea of Azov and the Kerch Strait continued after the dissolution of the Soviet Union. According to the Arbitral Tribunal, this conclusion is supported by the law of State succession, as reflected in international jurisprudence, by the operation of law in accordance with the Convention and other rules of international law, as well as by the text of the Azov/Kerch Cooperation Treaty. In the Arbitral Tribunal's view, the bilateral negotiations between the Parties, along with the conduct of the Parties since 1991, also appear consistent with this conclusion.

The Arbitral Tribunal next proceeds to consider whether the questions relating to the regime of internal waters at issue in this case fall outside the scope of the Convention. In the view of the Arbitral Tribunal, while the Convention does not establish a comprehensive regime for internal waters comparable to that for the territorial sea, "the critical question for determining its jurisdiction is not whether the Convention establishes a distinct regime for internal waters, but whether disputes relating to internal waters can constitute disputes concerning the interpretation or application of the Convention" (para. 404). It observes in this regard that "[w]hether a particular dispute concerns the interpretation or application of the Convention is a question that must be assessed in light of the subject matter of the dispute and the specific claims advanced by the parties" (para. 404).

The Arbitral Tribunal thus rejects the Russian Federation's second general objection that all disputes concerning Ukraine's claims relating to the Sea of Azov and the Kerch Strait fall outside the scope of the Convention. The Arbitral Tribunal further states that it will, instead, assess whether Ukraine's specific claims relating to the Sea of Azov and the Kerch Strait, such as those concerning navigation, the protection of the marine environment, and the protection of underwater cultural heritage ("UCH"), fall within the scope of the Convention in the relevant part of the Award.

Third General Objection (paras. 407-418)

With respect to the Russian Federation's third general objection, the Arbitral Tribunal recalls the well-established principle of international procedural law that "the jurisdiction of an international court or tribunal is determined based on the facts and legal situation as they existed on the date the proceedings were instituted" (para. 410). The Arbitral Tribunal further observes that a corollary of this principle is that subsequent acts of either party cannot defeat or undermine the jurisdiction of an international court or tribunal once that jurisdiction has been validly established.

The Arbitral Tribunal notes that, at the time the proceedings were instituted, "it was undisputed that both Ukraine and the Russian Federation were littoral States to the Sea of Azov", and "[t]here was no sovereignty dispute whatsoever over the relevant coastal regions" (para. 417). The alleged "change in circumstances" invoked by the Russian Federation occurred only on 30 September 2022, more than six years after the commencement of the present arbitration on 16 September 2016. In the view of the Arbitral Tribunal, these events do not and cannot have retroactive effect on its jurisdiction. Accordingly, the Arbitral Tribunal rejects the Russian Federation's third general objection.

C. Alleged Interference with Navigation in the Black Sea, the Sea of Azov, and the Kerch Strait (paras. 420-726)

Jurisdiction (paras. 609-625)

The Arbitral Tribunal first considers whether navigation in internal waters falls within the scope of the Convention and, consequently, whether a dispute relating to such navigation constitutes a dispute concerning the interpretation or application of the Convention within the meaning of Article 288, paragraph 1, of the Convention.

After examining several provisions of the Convention, the Arbitral Tribunal is of the view that the relevant provisions of the Convention establish "a general framework for navigation in internal waters" (para. 621) that provides a sufficient basis for its jurisdiction *ratione materiae* over a dispute concerning such navigation. It further notes that while the Arbitral Tribunal relies on those provisions to establish its jurisdiction over the navigational dispute in the Sea of Azov and the Kerch Strait, "in addressing this dispute it is not precluded from applying other relevant provisions of the Convention or other rules of international law not incompatible with the Convention, in accordance with Article 293 of the Convention" (para. 622).

Accordingly, the Arbitral Tribunal rejects the Russian Federation's objection that it lacks jurisdiction over Ukraine's claims on the ground that the Convention does not regulate navigation in internal waters, and finds that it has jurisdiction over those claims.

Alleged Unlawful Impediment of Transit Passage in the Kerch Strait (paras. 626-673)

With respect to the Russian Federation's additional objection to its jurisdiction, the Arbitral Tribunal observes that adjudicating Ukraine's claims does not require it to determine whether Ukraine is a State bordering the Kerch Strait, because Ukraine's claims are expressly premised on the characterization of the Kerch Strait as a strait used for international navigation within the meaning of Article 37 of the

Convention, in which all ships enjoy the right of transit passage pursuant to Article 38 of the Convention. Thus, in the view of the Arbitral Tribunal, "whether Ukraine is a State bordering the Kerch Strait is irrelevant in assessing Ukraine's claims" (para. 632). Accordingly, the Arbitral Tribunal rejects the Russian Federation's objection and finds that it has jurisdiction over Ukraine's claims in this regard.

With respect to the objection to the admissibility of Ukraine's claims, the Arbitral Tribunal notes that certain of Ukraine's claims concern events that occurred after the commencement of the arbitration. In the Arbitral Tribunal's view, the admissibility of such claims depends on whether they fall within the scope of the dispute originally submitted by Ukraine or transform the nature of that dispute. Having reviewed the Notification and Statement of Claim, the Arbitral Tribunal concludes that the claims remain within the scope of the dispute as originally formulated and do not transform its nature. Accordingly, the Arbitral Tribunal rejects the Russian Federation's objection to the admissibility of Ukraine's claims.

The Arbitral Tribunal next turns to the navigational regime applicable to the Kerch Strait. Recalling its finding that, following the dissolution of the Soviet Union, the Sea of Azov and the Kerch Strait had the status of internal waters, the Arbitral Tribunal considers that "the Kerch Strait does not qualify as a strait used for international navigation within the meaning of Article 37 of the Convention" (para. 652), since it does not connect one part of the high seas or an EEZ to another part of the high seas or an EEZ. It therefore finds that Articles 38, 43, and 44 of the Convention are inapplicable to the present dispute and that Ukraine's claims based on the regime of transit passage under those provisions are untenable.

To ascertain whether any legal basis other than transit passage could support Ukraine's claims, the Arbitral Tribunal then conducts a more detailed examination of the navigational regime applicable to the Kerch Strait. In this regard, it considers that the Azov/Kerch Cooperation Treaty is of particular relevance.

The Arbitral Tribunal notes that the obligation to resolve matters concerning the Kerch Strait through mutual agreement under Article 1 of the Treaty required the Parties to jointly regulate navigation in the Strait. Accordingly, in the view of the Arbitral Tribunal, "navigational measures such as VTS, pilotage, and one-way traffic requirements should have been established through mutual agreement between the Parties" (para. 661) and unilateral imposition of such measures by one Party would have been contrary to Article 1 of the Treaty.

The Arbitral Tribunal further notes that the navigational regime applicable to the Sea of Azov and the Kerch Strait varied "depending on the flag of the vessels as well as their classification and use as either commercial or governmental" (para. 664). Thus, according to the Arbitral Tribunal, vessels flying the flag of the Russian Federation or Ukraine enjoyed "freedom of navigation" or "free passage" (para. 665) in the Sea of Azov and the Kerch Strait. In contrast, vessels flying the flag of third States were granted a significantly more restricted right of navigation in these waters.

Although the Arbitral Tribunal considers this navigational regime to constitute part of the applicable law under which Ukraine's claim against the actions of the Russian Federation in the Sea of Azov and the Kerch Strait should be assessed, it observes that Ukraine's claims concerning navigation in the Kerch Strait are framed exclusively under Articles 38, 43, and 44 of the Convention and that Ukraine does not allege a breach of the Azov/Kerch Cooperation Treaty by the Russian Federation. In light of Ukraine's clear position on the inapplicability of the Azov/Kerch Cooperation Treaty in the present case, the Arbitral Tribunal considers that it would breach the principle of *ne ultra petita* if it proceeded to examine Ukraine's claims regarding navigation in the Kerch Strait under that Treaty. Consequently, the Arbitral Tribunal decides to halt "its inquiry into the significance of rights of navigation in the Sea of Azov and the Kerch Strait under the Azov/Kerch Cooperation Treaty for Ukraine's claims in this case" (para. 672).

In the view of the Arbitral Tribunal, it is, however, clear from the explicit terms of Article 2 of the Azov/Kerch Cooperation Treaty that the Parties were agreed that ships flying the flag of the littoral States could navigate freely throughout the Kerch Strait and the Sea of Azov and that ships of other States had more limited rights to call at ports in the Sea of Azov. The Arbitral Tribunal notes that its decision, therefore, "does not in any way affect or prejudice the position of any littoral State or any other third State in respect of any such navigational rights, which existed independently of the Convention until the termination of the Azov/Kerch Cooperation Treaty in 2023" (para. 673).

Alleged Violation of Innocent Passage in the Black Sea (paras. 674-684)

The Arbitral Tribunal finds that the Russian Federation's closure of the southern entrance to the Kerch Strait in the Black Sea for approximately six months, from April 2021 until the end of October 2021, does not constitute a violation of Article 25, paragraph 3, of the Convention, as it met the conditions for suspension of the innocent passage of foreign ships.

Alleged Impediment to Navigation in the Sea of Azov to and from Ukrainian Ports (paras. 685-696)

Recalling its findings above, the Arbitral Tribunal rejects the Russian Federation's objections to jurisdiction based on the arguments that internal waters fall outside the scope of the Convention and that a change in circumstances has deprived the Arbitral Tribunal of jurisdiction. The Arbitral Tribunal accordingly finds that it has jurisdiction over Ukraine's claims concerning the alleged impediment to navigation in the Sea of Azov to and from Ukrainian ports.

With respect to admissibility, although Ukraine's claims relate to events that occurred after the initiation of the present arbitration, the Arbitral Tribunal considers interference with navigation to be one of the central issues of the dispute originally submitted by Ukraine. The Arbitral Tribunal therefore does not consider these claims to fall outside the scope of the dispute and, accordingly, rejects the Russian Federation's objection to their admissibility.

Since the Arbitral Tribunal found that the Sea of Azov constituted the internal waters of both Parties at the time the arbitration was initiated, it considers that Articles 2, 58, 87, and 92 of the Convention invoked by Ukraine are inapplicable to the present dispute. The Arbitral Tribunal adds that, for the same reasons as are set out above, it must "refrain from examining whether the Russian Federation's stoppages and inspections in the Sea of Azov of Ukrainian flagged vessels as well as vessels flying the flags of third States to and from Ukrainian ports violated the navigational regime under the Azov/Kerch Cooperation Treaty" (para. 695). Accordingly, Ukraine's claims regarding impediments to navigation in the Sea of Azov must be rejected.

Alleged Seizure and Reflagging of JDRs (paras. 697 to 725)

The Arbitral Tribunal is of the view that it lacks jurisdiction to consider Ukraine's claim concerning the seizure of two Ukrainian-flagged Jack-up Drilling Rigs ("JDRs"), *Tavrida* and *Sivash*, in the territorial sea of Crimea, as no provision of the Convention indicates that the transfer of ownership of the JDRs falls within its competence. By contrast, the Arbitral Tribunal considers Ukraine's claim regarding the reflagging of the JDRs to be distinct from the question of ownership and therefore within the scope of the Convention. In the Arbitral Tribunal's view, adjudicating this claim likewise does not require it to address the issue of sovereignty over Crimea. Accordingly, the Tribunal finds that it has jurisdiction over Ukraine's claim regarding the reflagging of the JDRs and that Ukraine's claim is admissible.

On the merits, the Arbitral Tribunal considers that while, under Article 91 of the Convention, each State has exclusive jurisdiction not only over granting nationality to ships but also over withdrawing it, "this does not necessarily mean that the registration of a ship in one State's registry prevents its re-registration in the registry of another State" (para. 723). In the circumstances of the present case, in the Arbitral

Tribunal's view, Article 91 of the Convention cannot be invoked to prohibit the registration of the JDRs with the Russian Vessels Registry. Accordingly, the Arbitral Tribunal dismisses Ukraine's claim that, by reflagging the JDRs, the Russian Federation violated Article 91 of the Convention.

D. Alleged Failure to Protect the Marine Environment (paras. 727-975)

Jurisdiction and Admissibility (paras. 868-872)

The Arbitral Tribunal first addresses the Russian Federation's objections to its jurisdiction over Ukraine's claims, as well as to the admissibility of certain claims.

The Arbitral Tribunal considers that the provisions of UNCLOS invoked by Ukraine apply to all maritime areas, including internal waters, and that Ukraine's claims concerning the protection and preservation of the marine environment in the Sea of Azov and the Kerch Strait fall within the scope of the Convention. Accordingly, the Arbitral Tribunal rejects the Russian Federation's objection and finds that it has jurisdiction over those claims.

With respect to the admissibility of Ukraine's claim concerning the laying of a fibre-optic cable, the Arbitral Tribunal observes that Ukraine, in its Notification and Statement of Claim and in its Memorial, requested relief in relation to the Russian Federation's construction activities in the Kerch Strait, including the laying of cables and pipelines. The Arbitral Tribunal therefore finds that Ukraine's claim regarding the laying of fibre-optic cables arises directly out of the question that forms the subject-matter of the dispute. Accordingly, the Arbitral Tribunal dismisses the Russian Federation's objection to the admissibility of that claim.

Alleged Violation of Article 206 of the Convention (paras. 873-913)

At the outset, the Arbitral Tribunal notes that Article 206 of the Convention requires States to assess, prior to their execution, the potentially harmful effects of planned activities under their jurisdiction or control on the marine environment and subsequently to communicate reports of the results obtained. It further notes that the obligation to conduct an environmental impact assessment ("EIA") under Article 206 requires States to "determine objectively whether there exist 'reasonable grounds for believing'" (para. 880) that there is a risk of such effects. Consequently, according to the Arbitral Tribunal, States are required to "conduct a preliminary assessment of whether planned activities … may cause substantial pollution of, or significant and harmful changes to, the marine environment" (ibid.). The Arbitral Tribunal also considers that, while Article 206 does not specify the scope and content of an EIA, a State's discretion in determining its scope and content is not unlimited. In this regard, the Arbitral Tribunal refers to previous jurisprudence and points out the need to exercise due diligence in conducting an EIA. The Arbitral Tribunal is of the view that the obligation to communicate reports of the results of assessments is "a strict or 'absolute' requirement" (para. 889).

Having determined that Article 206 of the Convention requires States to conduct a preliminary assessment to determine whether an EIA is necessary, the Arbitral Tribunal turns first to the fibre-optic cable at issue between the Parties. In the view of the Arbitral Tribunal, while "[t]he lack of contemporaneous evidence of a formal preliminary assessment is regrettable" (para. 897), nothing on the record suggests that this requirement was not complied with. The Arbitral Tribunal accordingly concludes that the evidence before it does not establish that the Russian Federation's decision not to conduct an EIA for the laying of the submarine fibre-optic cable violated Article 206.

The Arbitral Tribunal next considers whether the Russian Federation conducted adequate EIAs for the construction projects. "Given the magnitude of the projects in question and their potential impact on the marine environment, and in light of international practice," the Arbitral Tribunal is not convinced that "the timeframe for the EIAs conducted by the Russian Federation was sufficient to meet the

requirements under Article 206" (para. 904). Furthermore, in the view of the Arbitral Tribunal, "the Russian Federation has not rebutted Ukraine's claim that the Russian Federation failed to collect sufficient baseline data for adequate EIAs before the start of the projects in question" (para. 908). Accordingly, the Arbitral Tribunal finds that the Russian Federation has failed to demonstrate that it met the standard under Article 206.

Finally, the Arbitral Tribunal considers whether the Russian Federation communicated its EIA reports in compliance with Article 206 of the Convention. It notes that "at no point in these proceedings has the Russian Federation claimed, let alone established," (para. 910) that it had communicated such reports. The Arbitral Tribunal thus concludes that the Russian Federation did not meet the requirements under Article 206 of the Convention to communicate reports of the results of the EIAs in the manner provided in Article 205.

Alleged Violation of Article 204 and 205 of the Convention (paras. 914-941)

The Arbitral Tribunal notes that Article 204, paragraph 1, of the Convention elaborates the notion of "monitoring" by specifying four types of activities, namely "observe, measure, evaluate and analyse", and that the provision also refers to the use of "recognized scientific methods," which is an exacting standard (para. 917). In the view of the Arbitral Tribunal, to the extent that a State carries out its monitoring activities in accordance with this provision, it may decide on the details of precisely how to engage in those activities. The Arbitral Tribunal further notes that Article 204, paragraph 2, of the Convention imposes upon States a "stricter" obligation to keep under surveillance the effects of any activities that States have permitted or in which they are engaged. The Arbitral Tribunal adds that the obligation to publish reports under Article 205 is an "absolute" or mandatory obligation and that such reports "should contain sufficient information to enable other States to independently assess risks to the marine environment" (para. 924).

The Arbitral Tribunal finds no clear evidence that the Russian Federation violated Article 204 of the Convention. It notes that the Russian Federation submitted evidence describing extensive monitoring programmes for the construction projects in the Kerch Strait. The Arbitral Tribunal further notes that Article 204 does not require "an independent monitoring program or regime" for each project, provided that the monitoring, however it is organised, is capable of determining the actual impact of the relevant activities (para. 935).

The Arbitral Tribunal likewise finds no clear evidence that the Russian Federation violated Article 205 of the Convention. It notes that States have "a certain amount of discretion as to what they publish as their 'reports of the results'" (para. 939). The Arbitral Tribunal considers that the summaries of quarterly environmental monitoring compiled by the Institute of Ecology and the publications of the Zubov Institute and the EMBLAS-II Project constitute such publication of "reports of the results" of environmental monitoring of the construction projects.

Alleged Violation of the General Obligation to Protect the Marine Environment and Cooperate under Articles 123, 192, and 194 of the Convention (paras. 942-961)

The Arbitral Tribunal notes that Article 123 of the Convention establishes an obligation of conduct for States to make every effort to coordinate with other States bordering an enclosed or semi-enclosed sea in the manner provided in the Article. It further notes that the obligation under Articles 192 or 194 is an obligation of conduct, which requires States to act with due diligence. The Arbitral Tribunal considers that "the duty to cooperate is an integral part of the general obligations under articles 194 and 192 of the Convention" (para. 952). It adds that "the duty to cooperate operates at three levels: as a specific obligation under Articles 192 and 194; as a concept permeating the entirety of Part XII; and as a fundamental principle of general international law" (para. 953).

The Arbitral Tribunal finds that, by conducting the EIAs inconsistent with the requirements under Article 206 and failing to communicate reports of their results in the manner provided in Article 205, the Russian Federation did not fulfil its due diligence obligations under Articles 192 and 194. It also notes that the record before it shows that both Parties fell short of fulfilling their respective duties to cooperate. The Arbitral Tribunal thus finds that the Russian Federation did not fulfil its duty to cooperate under Articles 123, 192, and 194.

Alleged Violation of Articles 123, 192, 194, 198, 199, 204, and 205 of the Convention with Regard to the Oil Spill (paras. 962-974)

With respect to the oil spill incident near Sevastopol, the Arbitral Tribunal notes that Article 198 of the Convention mandates specific steps States must take in response to an imminent threat of, or actual damage caused by, pollution. In the Arbitral Tribunal's view, "minor incidents incapable of posing such risk of damage do not fall within the scope of Article 198" (para. 965). In addition, the provision is engaged only where the actual or potential damage is caused by human activities.

While the Arbitral Tribunal is not in a position to determine whether the Sevastopol oil spill originated from natural causes or human activity, it sees no evidence that "the incident was of such a scale as to trigger the relevant obligations under Article 198 of the Convention" (para. 971). Given the very small scale of the incident as well as the removal and monitoring efforts undertaken by the Russian authorities to address the pollution incident, the Arbitral Tribunal does not find that the Russian Federation violated Articles 192 and 194. Accordingly, the Arbitral Tribunal concludes that the Russian Federation's response to the oil spill incident near Sevastopol did not violate Articles 123, 192, 194, 198, 199, 204, or 205 of the Convention.

E. Alleged Failure to Protect Underwater Cultural Heritage (paras. 976-1152)

Jurisdiction (paras. 1088-1103)

The Arbitral Tribunal first addresses whether it has jurisdiction over Ukraine's claims relating to UCH. It considers that the phrase "objects of an archaeological and historical nature found at sea" referred to in Article 303, paragraph 1, of the Convention indicates "a broad scope for the provision, not limiting its application to a specific maritime zone or zones but applying it to all maritime areas, including internal waters" (para. 1091). Recalling Article 288 of the Convention, which grants the Arbitral Tribunal jurisdiction over any dispute concerning the "interpretation or application of this Convention", the Arbitral Tribunal further considers that the Parties' disagreement regarding Ukraine's reliance on extraneous instruments is an aspect of the interpretation and application of Article 303, paragraph 1. In light of the foregoing, the Arbitral Tribunal rejects the Russian Federation's objections to its jurisdiction over Ukraine's UCH-related claims and concludes that it has jurisdiction over those claims.

The Arbitral Tribunal also rejects the Russian Federation's objection based on the "clean hands" doctrine, both as a challenge to admissibility and as a defence on the merits of Ukraine's UCH-related claims.

The Nature and Scope of the Duty Under Article 303, Paragraph 1, of the Convention (paras. 1104-1113)

The Arbitral Tribunal next examines the nature and scope of the duty imposed on States by Article 303, paragraph 1, of the Convention. It considers that "the duty to protect under Article 303, paragraph 1, is a duty of due diligence and that it is an obligation of conduct" (para. 1106). It adds that the existence or absence of actual harm to UCH "may be relevant in assessing the international responsibility for non-compliance with the duty of due diligence but cannot be decisive" (para. 1107).

Regarding relevant international rules and standards, the Arbitral Tribunal considers that "the UCH Convention, including the UCH Rules, is a distinct legal instrument" and that Article 303, paragraph 1, of the Convention "cannot be read to import the UCH Rules as applicable law" (para. 1113). Rather, in the view of the Arbitral Tribunal, "the UCH Rules may constitute a relevant factor in interpreting and applying this provision and inform the scope and content of the duty of due diligence under Article 303, paragraph 1" (ibid.). Accordingly, compliance with the UCH Rules may be relevant in assessing whether a State has fulfilled its duty under Article 303, paragraph 1. However, non-compliance with the Rules does not necessarily entail a breach of the Convention.

Four Instances of Alleged Violation of Article 303, Paragraph 1, of the Convention (paras. 1114-1151)

As a preliminary matter, the Arbitral Tribunal notes that due diligence requires States not only to enact an appropriate legislative framework, but also to enforce that framework with adequate vigilance. In the Arbitral Tribunal's view, where the activity in question is carried out by private individuals, a breach of the duty of due diligence may arise "if a State fails to take all necessary measures to ensure that private individuals do not engage in activities inconsistent with international rules" (para.1117). The Arbitral Tribunal further notes that Ukraine as the Claimant, in principle, bears the initial burden of establishing the factual allegations supporting its UCH claims.

Having made these preliminary observations, the Arbitral Tribunal turns to the four incidents invoked by Ukraine: (1) the Byzantine shipwreck, (2) the terracotta sculpture fragment, (3) the Kittyhawk aircraft, and (4) the Airacobra aircraft.

Upon examining the evidence submitted by Ukraine in support of each incident, the Arbitral Tribunal finds that Ukraine has failed to substantiate its allegations. The Arbitral Tribunal accordingly concludes that the conduct of the Russian Federation in relation to the four abovementioned incidents does not constitute a violation of Article 303 of the Convention.

F. Alleged Aggravation of the Dispute (paras. 1153-1234)

Existence and Nature of a Duty of Non-Aggravation of a Dispute (paras. 1211-1220)

The Arbitral Tribunal first addresses whether a duty not to aggravate a dispute exists at all under the Convention and, if so, what the nature of such duty is. Regarding the existence of such duty, the Arbitral Tribunal is of the view that a duty to "refrain from aggravating a dispute in the course of dispute settlement proceedings" (para. 1216) exists under Articles 279 and 300 of the Convention.

Regarding the nature of the duty of non-aggravation, the Arbitral Tribunal is of the view that "any claim of non-aggravation of a dispute is inherently tied to that underlying dispute, and in order to assess whether that dispute has been aggravated, jurisdiction over the original dispute must exist" (para. 1218).

Jurisdiction (paras. 1221-1227)

The Arbitral Tribunal notes that the actions of the Russian Federation complained of by Ukraine with regard to its claim of aggravation relate to "the continued construction and completion of the Kerch Strait bridge and the other construction projects without conducting adequate environmental assessment and monitoring, the continued alleged interference with international shipping and the alleged continued disturbance of UCH" (para. 1223). Having concluded above that it has jurisdiction over the Parties' disputes relating to these matters, the Arbitral Tribunal finds that it has jurisdiction over Ukraine's claim concerning non-aggravation of the dispute.

For the same reasons set out above, the Arbitral Tribunal also rejects the Russian Federation's objection based on the "clean hands" doctrine, both to the admissibility of, and as a defence to, Ukraine's claim of aggravation of the dispute.

Alleged Aggravation of the Dispute (paras. 1228-1233)

The Arbitral Tribunal is of the view that "the standard for determining whether a State's actions amount to an aggravation of a dispute is a high one" (para. 1230). Thus, the Arbitral Tribunal notes, the mere continuation of the conduct in dispute would not necessarily constitute the aggravation of the existing dispute. Referring to the three categories of conduct identified by the *South China Sea* arbitral tribunal that can constitute aggravation of a dispute, the Arbitral Tribunal considers that "none of the Russian Federation's conduct complained of by Ukraine rises to this level of seriousness" (para. 1233). Accordingly, the Arbitral Tribunal concludes that the Russian Federation did not violate Articles 279 and 300 of the Convention.

G. Entitlement to Relief (paras. 1235-1280)

Declaration (paras. 1266-1268)

Where the Arbitral Tribunal has found that certain conduct of the Russian Federation was incompatible with its duties under the Convention, the Arbitral Tribunal considers that this Award constitutes appropriate declaratory relief.

Cessation and Assurance and Guarantees of Non-Repetition (paras. 1269-1271)

The Arbitral Tribunal notes that orders for cessation and assurances and guarantees of non-repetition are extraordinary measures. In the view of the Arbitral Tribunal, having provided declaratory relief, it is not necessary to order cessation and assurances and guarantees of non-repetition. However, the Arbitral Tribunal underlines that "its decision not to order such remedy has no impact on States' obligations under international law to cease wrongful conduct and to give assurances of non-repetition of such activity" (para. 1271). In this regard, it draws the attention of the Parties to their continuing obligations relating to the protection and preservation of the marine environment, in particular their respective duty to cooperate for the protection and preservation of the marine environment in the Black Sea, the Sea of Azov and the Kerch Strait. The Arbitral Tribunal reiterates that "the Parties remain under continuing duties to cooperate even in times of tension and hostility" (para. 1271).

Reparation (paras. 1272-1276)

Recalling that it has rejected Ukraine's claims relating to navigation, UCH and aggravation of the dispute, the Arbitral Tribunal declines Ukraine's request for reparation arising under these claims. As concerns Ukraine's claims relating to the marine environment, the Arbitral Tribunal does not find it necessary to grant further relief in the circumstances of the present case.

Costs (paras. 1279-1280)

As regards costs, the Arbitral Tribunal sees no reason to depart from the general rule that each Party shall bear its own costs.

H. Dispositif (para. 1281)

The operative part (*dispositif*) of the Award reads as follows:

> For the reasons set out in this Award, the Arbitral Tribunal
>
> **In relation to jurisdiction and admissibility**
>
> (1) *Finds*, unanimously, that it has jurisdiction over Ukraine's claims made in its Final Submissions 1(a), (b), (c), (e), (f), (g), (h), and (i);
>
> (2) *Finds*, unanimously, that it lacks jurisdiction over Ukraine's claims regarding the seizure of two Ukrainian-flagged JDRs made in its Final Submissions 1(d);
>
> (3) *Finds*, unanimously, that it has jurisdiction over Ukraine's claims regarding the reflagging of two Ukrainian-flagged JDRs made in its Final Submissions 1(d);
>
> (4) *Rejects*, unanimously, the Russian Federation's objections to the admissibility of Ukraine's claims made in its Final Submissions 1(a), (b), (c), (d), (e), (h), and (i), and *finds* that the aforementioned claims are admissible;
>
> **In relation to the merits of the dispute between the Parties**
>
> (5) *Decides*, unanimously, that the Russian Federation violated Article 206 of the Convention by conducting the EIAs for the Kerch Strait bridge, power cables, and gas pipelines in a manner inconsistent with the requirements under that provision;
>
> (6) *Decides*, unanimously, that the Russian Federation violated Articles 205 and 206 of the Convention by failing to publish reports of the results of the EIAs for the Kerch Strait bridge, power cables, and gas pipelines or provide such reports to the competent international organisations in a manner consistent with the requirements under those provisions;
>
> (7) *Decides*, unanimously, that the Russian Federation violated Articles 123, 192, and 194 of the Convention by conducting the EIAs for the Kerch Strait bridge, power cables, and gas pipelines in a manner inconsistent with the requirements under Article 206 of the Convention, by failing to communicate reports of their results in a manner provided in Article 205 of the Convention, and by failing to fulfil its duty to cooperate with respect to the protection and preservation of the marine environment in and around the Kerch Strait;
>
> (8) *Rejects*, unanimously, all other claims made by Ukraine in its Final Submissions;
>
> **In relation to entitlement to relief**
>
> (9) *Considers*, unanimously, that the decisions made in subparagraphs (5), (6), and (7) of this Dispositif constitute appropriate declaratory relief;
>
> (10) *Finds*, unanimously, that, having provided declaratory relief, it is not necessary to order cessation, assurances and guarantees of non-repetition, or reparation;
>
> (11) *Decides*, unanimously, that it is not necessary to amend the Rules of Procedure to increase from six months to 24 months the period in which the Parties may submit requests for interpretation of this Award or concerning the manner of its implementation;
>
> **In relation to costs**
>
> (12) *Decides*, unanimously, that each Party shall bear its own costs.

* * *