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# The Award Concerning Jurisdiction in the Coastal State Rights Dispute Between Ukraine and Russia: What Has Been Decided and What to Expect Next

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**ABSTRACT**

*On 21 February 2020, the Annex VII Tribunal rendered its Award concerning the jurisdiction in the Dispute Concerning Coastal State Rights in the Black Sea, the Sea of Azov, and Kerch Strait (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, Award Concerning the Preliminary Objections of the Russian Federation [Award], 2020). The Award opened a new chapter in the high-stakes legal battle between Ukraine and the Russia Federation over the alleged seizure and exploitation of oil fields on Ukraine's continental shelf, fisheries near the coast of Crimea, navigation through Kerch Strait, the construction of Kerch Bridge, and the conduct of studies of underwater archeological and historical sites in the Black Sea. The Award reflected on six objections raised by Russia. Thus, the Tribunal backed Russia's arguments that ruling on most Ukrainian claims concerning the rights in the Black Sea will inevitably require the Tribunal to first decide on the issue of sovereignty over Crimea. Therefore, it won't have jurisdiction over those claims. Addressing the objection concerning the status of Kerch Strait and the Sea of Azov, the Tribunal stressed that the issue does not possess an exclusively preliminary character and cannot be resolved without judging on the merits. It also disagreed with the Russian objection that UNCLOS does not at all regulate a regime of internal waters. The Tribunal listed three examples of provisions of UNCLOS that are applicable to internal waters. They regulate 1) the boundaries of the internal waters areas; 2) execution of the right of innocent passage in internal waters areas which had not previously been considered as such, and 3) protection and preservation of the marine environment. The Tribunal declined further objections of the Russian Federation and set 20 August 2021 as a deadline for the submission of memoranda by the parties.*

***The key words:*** *UNCLOS arbitration, Ukraine-Russia arbitration, law of the sea dispute settlement, Sea of Azov and Kerch Strait, Black Sea, sovereignty claims.*

## Introduction

Dispute Concerning Coastal State Rights in the Black Sea, the Sea of Azov, and Kerch Strait (the **"Arbitration"**) is one of two arbitrations instituted by Ukraine against the Russian Federation, which relates to the law of the sea. Its initiation followed the occupation of the Crimean Peninsula by the Russian Federation in February-March 2014 and consequent disagreements concerning numerous issues of maritime cooperation and execution of coastal state rights. The start of the arbitral proceedings was given by Ukraine on 16 September 2016 pursuant to Part XV ("Settlement

of Disputes") and Annex VII ("Arbitration") of the United Nations Convention on the Law of the Sea (UNCLOS) (Statement of the Ministry of Foreign Affairs of Ukraine on the Initiation of Arbitration against the Russian Federation under the United Nations Convention on the Law of the Sea). Ukraine was claiming that Russia violated its rights arising under UNCLOS.

The move was not the first time Ukraine opted for proceedings before an international court or tribunal in order to litigate one of the aspects of the broader dispute over Crimea (see a brief overview of the international litigations between Ukraine and Russia in article of Nuridzhanian (2016)). At the time, Ukraine had already initiated proceedings before the European Court for Human Rights pointing out on different violations of human rights by Russia (Milanovic, 2015). Moreover, Ukraine complained to the International Court of Justice concerning the alleged racial discrimination of Ukrainians and Crimean Tatars in Crimea (Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination, 2017). Several proceedings between Ukrainian legal entities and Russia began in the ad-hoc arbitral tribunals for violations of a bilateral investment agreement (see available information, for instance Agreement between the Government of the Russian Federation and Cabinet of Ministers of Ukraine, 1998; Stabil LLC and Others v. Russian Federation, 2019 and article by Yong (2016)).

According to the procedural timetable adopted by the Annex VII Tribunal on 18 May 2017, the Russian Federation had to submit its counter-memorial before 19 November 2018. Accordingly, the reply and rejoinder had to be submitted until 19 December 2019. Russia, however, brought the objections to the jurisdiction of the Tribunal and requested separate jurisdictional hearings. The Tribunal in the Procedural Order of 20 August 2018 supported this request (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, Procedural Order No. 3 Regarding Bifurcation of the Proceeding). It ruled that Russia's preliminary objections with regards to the *ratione materiae* jurisdiction of the Arbitration Tribunal had to be examined in a prior to the merits. A new timetable was set to accommodate preliminary jurisdictional hearings. The parties had to submit their written arguments concerning the jurisdiction of the Tribunal, the reply, and rejoinder by 28 March 2019.

On 21 February 2020, the Annex VII Tribunal rendered its Award concerning the preliminary objections of the Russian Federation (Award, 2020). By this Award, the Tribunal upholds the Russian objection that the Tribunal has no jurisdiction over Ukraine's claims, to the extent that a ruling of the Tribunal on the merits would necessarily require it to decide, directly or implicitly, on the sovereignty of either party over Crimea. At the same time, the Tribunal rejected other objections to its jurisdiction brought by the Russian Federation. The Tribunal issued a follow up procedural order which set up a new timetable for the submission of the memoranda by the parties (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, Procedural Order No. 7, 2020). According to the later, Ukraine's memorial covering the merits of the case is now expected on 20 May 2021 and Russia's on 21 February 2022. Reply and rejoinder should be submitted until 21 December 2022.

Since the written memoranda of both parties remain confidential, the latest development brought with it some transparency in the Arbitration. Previously, Ukraine's government made several statements (Kyiv Ready to File Claim against Russia's Violation of UN Convention on Law of Sea, No Political Decision of Authorities, 2016), from which it became clear that Ukraine is claiming that Russia violated UNCLOS by seizing and exploiting the oil fields on Ukraine's continental shelf, illegal fisheries close to the coast

of Crimea, complicating the navigation through Kerch Strait (Russia's Harassment of International Shipping Transiting the Kerch Strait and Sea of Azov, 2018), the construction of Kerch Bridge (Statement by Spokesperson Nauert on the Opening of the Kerch Bridge in Crimea, 2018), and unauthorized studying of underwater archeological sites in the Black Sea.

The Award concerning the jurisdiction tackles a variety of the parties' arguments concerning jurisdiction *ratione materiae* (the known Ukrainian claims that were mentioned or discussed in the Award may be found in the Annex II to this article. Annex I in its turn consolidates the articles of the UNCLOS that were used by Ukraine to construct it's claims against the Russian Federation). At the same time, it inevitably shed a much brighter light on the substantive positions of the parties than the Bifurcation Order. Thus, the Award reflects on six separate objections presented by Russia in its written submission. In the following sections of this paper, these objections will be studied one after another. It will be shown how the Tribunal approached the parties' arguments and who can claim preliminary victory in their pleas.

**Methodology**

This research follows the latest decision of the Annex VII UNCLOS Tribunal in the dispute between Russia and Ukraine. It examines the arguments put forward by the parties to the dispute and their assessment by the Tribunal. The selection of this method was dictated by the objective of the study, which was to identify the arguments presented by the parties to the dispute that the Tribunal accepted and those that it refused to accept. The study subsequently attempted to predict further developments in the arbitration. Since a lot of information about the dispute, including the original submission of Ukraine, is not available, the study had to rely primarily on the parties' memoranda submitted before the preliminary hearings and on occasional comments in media.

**Objection 1: The Sovereignty Claims**

Russia's first and the most important and comprehensive objection (discussed by Tzeng (2016) with regards to the doctrine of indispensable issues and by Valentin Schatz and Dmytro Koval with regards to the current arbitration ((Schatz & Koval, 2018a; Schatz & Koval, 2018b and Schatz & Koval, 2018c) is that the "actual objective of Ukraine's claims is in fact to advance its position in the Parties' dispute over Crimean sovereignty" (Award, 2020, para. 57). In other words, Russia argues that the real subject-matter of the dispute is not about the matters brought under UNCLOS but concerns territorial sovereignty. That means that the arbitral tribunal cannot decide on Ukrainian claims without first deciding on the territorial sovereignty issue.

Indeed, the claims based on coastal state rights in maritime zones generally implicate matters of territorial sovereignty (Schatz & Koval, 2018e).

This is because, in accordance with the well-established principle of international law that "the land dominates the sea" (North Sea Continental Shelf, para. 96) maritime entitlements belong to the state that has a sovereignty over the territory adjacent to them. In several disputes (South China Sea Arbitration (The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China), PCA Case No. 2013-19, Award, 2016) and the Chagos Marine Protected Area Arbitration (Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom), PCA Case No. 2011-03, Award, 2015), the similar to Ukraine-Russia tribunals instituted under Part XV of UNCLOS, discussed the acceptability of cases where the sovereignty claims are involved. The very same issue was covered also by the several academic commentaries (see, for instance Proelss, 2018, p. 48).

While the approaches in the South China Sea Arbitration and Chagos Marine Protected Area Arbitration differ in the nuances, both arbitrations implied the existence of a rather narrow

jurisdictional bottleneck under Article 288(1) of UNCLOS for bringing sovereignty claims to the Annex VII arbitrations. In the first case, the tribunal ruled that to answer the question about the nature of the claims it has to determine "whether (a) the resolution of the claims would require the Tribunal to first render a decision on sovereignty, either expressly or implicitly; or (b) the actual objective of the claims was to advance its position in the Parties' dispute over sovereignty" (Award, 2020, para 129). In the second case, the tribunal repackaged a similar jurisdictional problem stressed that it is crucial for the tribunal to determine where [on sovereignty or UNCLOS sides] "the relative weight of the dispute lies" (Award, 2020, para 82).

In this Ukraine v. Russia Arbitration, the parties agreed in principle that article 288(1) of UNCLOS does not "assert that such [Tribunal's] jurisdiction should extend to making a decision on any sovereignty dispute" (Award, 2020, para 161). There were, however, differences in answering two follow-up questions: (a) whether sovereign dispute over Crimea exists and (b) if the dispute exists whether it should prevent the Tribunal from advancing to the merits. Answering both questions, the Tribunal quite predictably (taking into consideration the previous practice of the Annex VII tribunals) sided with Russia's comprehension of the issues.

With regards to the first question, the Tribunal clarified that the notion of the "dispute" is well defined in international law as the situation where "the claim of one party is positively opposed by the other" and the two sides "hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations" (Award, 2020, para. 163). Citing ICJ's South West Africa Cases, the Tribunal noted that "it is not sufficient for one party to a contentious case to assert that a dispute exists with the other party" (South West Africa Cases, 1962, p. 328). This means, inter alia, that artificial dispute over maritime entitlements invented only to torpedo the jurisdiction of the tribunal

would not avert the tribunal to go into details of the UNCLOS claims of one of the parties.

That having been said, the Tribunal ruled that the facts of the case clearly demonstrate that Ukraine and Russia uphold opposite positions regarding the sovereignty over Crimea and consistently voiced them on different international fora. The Tribunal remained unconvinced (Award, 2020, para. 182) by the Ukrainian argument that "Russian Federation's claim that the legal status of Crimea had been altered is inadmissible and cannot be entertained in this proceeding" (Award, 2020, para. 167). According to the ruling, neither the United Nations General Assembly Resolution calling upon the UN member states "not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol" (Resolution adopted by the General Assembly on 27 March 2014, 2014, para. 6; Award, 2020, para. 176) nor the principle of good faith and estoppel (Award, 2020, para. 181) convincingly prove to the Tribunal that the Russian Federation's claim of sovereignty is inadmissible for the purposes of the hearings (Award, 2020, para. 182). That is not to say, that the Tribunal in any way recognized the legality of the claims. On the contrary, it refrained from making any judgments concerning the legality or validity of the Russian Federation's position with regards to Crimea. However, it ascertained that after 2014, the parties' views on the status of the peninsula changed and therefore the dispute emerged (Award, 2020, para. 178).

The closest the Tribunal came to embracing the position of Ukraine, was when it approached the argument advanced by Ukraine that "to defeat the Arbitral Tribunal's jurisdiction, it is not sufficient for the Russian Federation to put forward a claim to sovereignty, but its claim must be at least plausible" (Award, 2020, para. 183). Responding to this argument, the Tribunal stressed that the test of plausibility might indeed exist, but Ukraine "has failed to state the content or standard of such a test in sufficiently clear terms" (Award, 2020, para. 187). Besides, the Tribunal demonstrated that the threshold that

may theoretically bar the initiation of the dispute due to implausible claims of sovereignty is rather low in international law (Award, 2020, para. 188). That is why the Russian Federation's claim of sovereignty may not be found implausible (Award, 2020, para. 190).

Last but not least, the Tribunal studied the relative weight of the sovereignty and UNCLOS parts of the disputes between Ukraine and Russia. Quite unequivocally, the Tribunal backed the Russian position that the current Arbitration differs from those other resolved by the Annex VII tribunals in the South China Sea Arbitration (Award, 2020, para. 160) and Chagos Marine Protected Area Arbitration (Award, 2020, para. 195). In doing so, it recognized that ruling on most, however not all, Ukrainian claims will inevitably require the Tribunal to first decide on the issue of sovereignty over Crimea.

### Objection 2: Jurisdiction over the activities in Kerch Strait and the Sea of Azov

The second objection concentrates around Russia's argument that the Sea of Azov and Kerch Strait should be seen as the internal waters of two states. The named bodies of water used to be internal waters as a bay of a single state (the USSR) prior to 1991 when Ukraine got its independence. For the post-independence period, two different qualifications of the status of Kerch Strait and the Sea of Azov are possible. According to the first one, supported by Russian Federation (which is mainly based on the decision of ICJ in the Gulf of Fonseca case (Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Zntewene, Judgment, I.C.J. Reports 1990) and the award of the ad hoc tribunal in Croatia v. Slovenia case (Arbitration Between the Republic of Croatia and the Republic of Slovenia, PCA Case No. 2012-04, Final Award, 2017), no automatic change of the status of Kerch Strait and the Sea of Azov occurred after 1991 and, therefore, they remain shared internal waters of Ukraine and Russia. In support of its position Russia recalls

the bilateral Azov/Kerch Cooperation Treaty of 2003 (Dohovir pro spivrobitnytstvo u vykorystanni Azovskoho moria i Kerchenskoi protoky, 2003) (see Valentin Schatz and Dmytro Koval unofficial translation (Schatz & Koval, 2018d) and commentary on the matter (Schatz & Koval, 2018a)) between Ukraine and Russia that points out that Kerch Strait and the Sea of Azov "historically constitute internal waters of the Russian Federation and Ukraine" (Award, 2020, para. 240). Building on this argument about the status of Kerch Strait and the Sea of Azov, the Russian Federation further argued that Annex VII tribunal doesn't have jurisdiction since UNCLOS does not apply to internal waters.

Ukraine countered with the alternative understanding of the status of Kerch Strait and the Sea of Azov stressing that the Treaty was merely a response to the tensions over Russia's 'unilateral construction in the Kerch Strait of a dam in an attempt to connect Tuzla Island – part of Ukraine's territory – to Russia's Taman peninsula" (Award, 2020, para. 240). That meant, according to Ukraine's submission, that the Treaty was a preliminary arrangement that did not "bridge the gap between Russia's position seeking an internal waters status, and Ukraine's insistence on delimitation" (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, Written Observations and Submissions of Ukraine on Jurisdiction [Ukraine's Memorial], 2018, para. 80). Therefore, Ukraine stated that the Sea of Azov and Kerch Strait, while historically being the internal waters of the USSR, later altered their status (Award, 2020, para. 242).

In its brief examination of the arguments of the parties, the Tribunal did not agree with the Russian objection that UNCLOS "does not regulate a regime of internal waters and, therefore, a dispute relating to events that occurred in internal waters cannot concern the interpretation or application of the Convention" (Award, 2020, para. 294). The Tribunal noted that at least with regards to

three issues it may have jurisdiction even over the internal water dispute: 1) the boundaries of the internal waters areas (Award, 2020, para. 296); 2) execution of the right of innocent passage in internal waters areas which had not previously been considered as such (Award, 2020, para. 294), and 3) protection and preservation of the marine environment under Article 192 of UNCLOS (Award, 2020, para. 295).

With regard to other arguments of the parties, the Tribunal found that they do not possess an exclusively preliminary character and therefore cannot be resolved without judging on the merits (Award, 2020, para. 297).

Tribunal's ruling in this part may be considered as a positive outcome for Ukraine since it wholly rejects Russian jurisdictional objection. However, the findings of the Tribunal do not undermine the fact that as a general rule UNCLOS does not regulate the activities in internal waters. Therefore, recognizing the Sea of Azov and Kerch Strait as internal waters would in dominant view (Schatz & Koval, 2018c) prevent the arbitral tribunal of material jurisdiction at least for those of Ukraine's claims that are not based on Article 192 of UNCLOS. But the negative for Ukraine determination of the status of the Kerch strait may become a reality only after the Tribunal studies the merits.

**Auxiliary objections 3-6**

The other four objections of the Russian Federation are largely complementary and auxiliary. Unlike the previous two, they do not intend to defeat the jurisdiction of the Tribunal in its entirety. They rather target isolated parts of the jurisdiction. If Russia persuades the Tribunal that it does not have a jurisdiction due to the mixed nature of the dispute (meaning that the dispute is both about territorial sovereignty and UNCLOS) or because the Sea of Azov and Kerch Strait constitute internal waters, there will be almost no need in other arguments against the Tribunal's jurisdiction to

dismiss most of the Ukrainian claims. The Tribunal in its Award underlined the very same thesis stressing that the discussed objections largely overlap with already stated by Russia in the beginning of its submission.

### Objection 3: Russia's Declaration under Article 298 UNCLOS

The third objection presented by Russia in its memorandum relates to the declarations under Article 298(1)(a) and (b) of UNCLOS, which both states made when they joined the convention (United Nations Convention on the Law of the Sea, 1982). Russian Federation's reading of the declarations suggested that the state extracted certain types of disputes from the jurisdiction of the dispute settlement bodies. Thus, Russia has excluded disputes concerning "military activities, including military activities by government vessels and aircraft", "law-enforcement activities regarding the exercise of sovereign rights or jurisdiction," and disputes concerning "historic bays or titles" and "sea boundary delimitations" from the jurisdiction of the Annex VII tribunal (Award, 2020, para. 298). Therefore, the Tribunal had to determine whether Ukrainian claims may be characterized as such that touch upon the issues excluded from the jurisdiction of the Annex VII tribunal by means of Russia's Article 298(1) declaration (Award, 2020, para. 303).

First, the Tribunal rejected the Russian Federation's "global objection" that all the dispute between the parties is covered by the Article 298(1) declaration since it results from the "the alleged use of force initially vitiating Crimea's reunification with [the Russian Federation]" (Award, 2020, para. 328). Arbitral Tribunal noted that UNCLOS employs the term "concerning military activities" instead of "arising out of" "arising from" or "involving" which indicates that the Convention precisely addressed disputes "whose subject matter is military activities" (Award, 2020, para. 330).

Second, the Tribunal ruled on other objections brought by Russia with regards to article 298(1) (specific aspects of military activities, law enforcement activities, and historic bays or titles). In each case, the tribunal found Russian objections either repetitive or irrelevant and rejected them (Award, 2020, paras 331-389).

**Objection 4: Fisheries in the EEZ**

In its fourth objection, Russia argues that the arbitral tribunal lacks jurisdiction due to the so-called "automatic limitation" enshrined in Article 297(3)(a) of UNCLOS. Russia's insists that since the dispute concerns living marine resources in the Exclusive Economic Zone the Article 297(3)(a) may be applicable in this dispute (Award, 2020, para. 397). The later article put in place an alternative to the Annex VII arbitration procedure of dispute settlement if the provisions of UNCLOS with regards to fisheries are claimed to be violated. As it may be concluded from the parties' submissions, the objection concerned Ukrainian claims about the alleged violation of its fisheries rights both in the Black Sea and the Sea of Azov.

The Tribunal, in its two-paragraphs assessment of the positions of the parties, concluded that "the interference by the Russian Federation with fisheries activities alleged by Ukraine occurred within an area that cannot be determined to constitute the exclusive economic zone of the Russian Federation or Ukraine" (Award, 2020, para. 402). Considering such an uncertainty, the Tribunal rejected Russian objection (Award, 2020, para. 402).

**Objection 5: Matching Declarations under Article 287 UNCLOS**

The fifth and probably the most senseless and in a way technical objection relates to Ukraine's and Russia's declarations under Article 287(1)(d) UNCLOS. By the declarations on the mentioned above article of the UNCLOS both states choose "special arbitration" under Annex VIII of UNCLOS "for the consideration

of matters relating to fisheries, the protection and preservation of the marine environment, marine scientific research, and navigation" (Award, 2020, para. 404). Article 287(4) UNCLOS states quite unequivocally that "[i]f the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted *only* to that procedure unless the parties otherwise agree" (Schatz & Koval, 2018e). That is why, Russia argues that only Annex VIII Tribunal may be an appropriate for a for the fisheries and maritime environment portions of the discussed in this paper dispute.

The Tribunal's Award, however, adopts the Ukrainian reading of the disputed article. It ruled that the disputes that arise of "wholesale violations of the Convention across numerous subject areas, both within and outside the four categories of disputes that may be submitted to an Annex VIII tribunal", as Ukraine put it (Ukraine's Memorial, 2018, para. 164) should not be artificially split or fragmented between several dispute settlement bodies (Award, 2020, para. 442). Therefore, the Russian objection had been rejected (Award, 2020, para. 443).

### Objection 6: Dispute Settlement Clauses in Bilateral Agreements

The sixth objection of Russia brings Article 281(1) of UNCLOS into play. The later provides that the dispute may not be heard by the selected according to Article 287 dispute settlement body (in this case Annex VII tribunal) when the parties agreed on other procedure by concluding another bilateral or multilateral treaty. Russia in its memorandum stressed that such an alternative peaceful settlement procedure was set up by the parties in the State Border Treaty and the Azov/Kerch Cooperation Treaty (Award, 2020, paras. 445, 446).

In the Award, the Tribunal approached the question of the alternative dispute settlement mechanisms from a slightly different angle. Instead of concentrating on the exclusivity of the dispute

settlement clauses, it questioned the nature of the provisions of the treaties (Article 5 of the State Border Treaty and Article 1 of the Azov/Kerch Cooperation Treaty) that the Russian Federation depicted as designated to regulate the settlement of disputes between the parties. The Tribunal arrived at the conclusion that neither Article 5 of the State Border Treaty nor Article 1 of the Azov/Kerch Cooperation Treaty can be understood as dispute settlement clauses (Award, 2020, para. 491).

The logic behind such a determination is the following: both articles referred to in the previous paragraph concern settlement of questions (according to Russian Federation translation of the articles) or issues (according to Ukrainian translation of the Article 1 of the Azov/Kerch Cooperation Treaty) which are not necessarily coincides with the international law concept of dispute (Award, 2020, para. 479). Moreover, articles from both treaties provide that the questions/issues should be settled by the agreement (Award, 2020, para. 482). Agreement, as the Tribunal notes in its judgement, is not a method or mean of dispute settlement but the outcome. Therefore, the provisions calling for the conclusion of the agreements may not be seen as a dispute settlement one. On these grounds, the tribunal dismissed Russian objection in its entirety (Award, 2020, para. 491).

## Conclusions

The jurisdiction Award of the Tribunal left both parties satisfied. The Russian Federation was contented since the Tribunal upheld the Russian objection that "the Arbitral Tribunal has no jurisdiction over Ukraine's claims, to the extent that a ruling of the Arbitral Tribunal on the merits of Ukraine's claims necessarily requires it to decide, directly or implicitly, on the sovereignty of either Party over Crimea" (Award, 2020, para. 492).

Ukraine, despite the undesirable while predictable outcome of the sovereignty objection, cannot complain either since the decision on the other major jurisdictional objection of Russia related to the status

of the Sea of Azov and Kerch Strait was postponed until the merits phase. Moreover, all auxiliary objections of the Russian Federation were also dismissed.

Right after the Award concerning jurisdiction was issued both Russian Federation (Press Release on the Decision of The Hague Arbitration Court Concerning Coastal State Rights in the Case of Ukraine v. the Russian Federation, 2020) and Ukraine (Foreign Ministry Comment on the Declaration by Law-of-the-Sea Tribunal Its Jurisdiction Over Ukraine's Case Against The Russian Federation, 2020) declared that they are satisfied with the result of the hearings. According to the statements of the parties, the Tribunal supported the core arguments of each state. It is hard to predict how the argument of the parties will exactly look like in the next phase of the proceedings. However, it may be safely presumed that Ukraine's claims with regards to the environmental issues have better chances to achieve their goal since they largely will not depend on the determination of the Sea of Azov and Kerch Strait status. Claims that concern innocent passage and Ukraine's rights in the Sea of Azov may be successful only if the Tribunal recognizes that after the dissolution of the USSR the status of the Sea of Azov and Kerch Strait changed. As for the other Ukrainian claims, it's hard to formulate a reliable prediction.

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## ANNEX I
## List of UNCLOS articles on which Ukraine based its substantive claims in the original Memorandum

| | |
|---|---|
| Article 2 | Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil |
| Article 21 | Laws and regulations of the coastal State relating to innocent passage |
| Article 33 | Contiguous zone |
| Article 38 | Scope of this section [Transit passage] |
| Article 43 | Navigational and safety aids and other improvements and the prevention, reduction and control of pollution |
| Article 44 | Duties of States bordering straits |
| Article 50 | Delimitation of internal waters |
| Article 51 | Existing agreements, traditional fishing rights and existing submarine cables |
| Article 52 | Right of innocent passage |

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|---|---|
| Article 56 | Rights, jurisdiction and duties of the coastal State in the exclusive economic zone |
| Article 57 | Breadth of the exclusive economic zone |
| Article 58 | Rights and duties of other States in the exclusive economic zone |
| Article 60 | Artificial islands, installations and structures in the exclusive economic zone |
| Article 61 | Conservation of the living resources |
| Article 62 | Utilization of the living resources |
| Article 63 | Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it |
| Article 64 | Highly migratory species |
| Article 73 | Enforcement of laws and regulations of the coastal State |
| Article 77 | Rights of the coastal State over the continental shelf |
| Article 92 | Status of ships |
| Article 123 | Cooperation of States bordering enclosed or semi-enclosed seas |
| Article 192 | General obligation [Protection and preservation of the marine environment] |
| Article 194 | Measures to prevent, reduce and control pollution of the marine environment |
| Article 198 | Notification of imminent or actual damage |
| Article 199 | Contingency plans against pollution |
| Article 204 | Monitoring of the risks or effects of pollution |
| Article 205 | Publication of reports [Environment assesment] |
| Article 206 | Assessment of potential effects of activities |
| Article 279 | Obligation to settle disputes by peaceful means |
| Article 303 | Archeological and historical objects found at sea |

## ANNEX II
## List of known Ukrainian submissions in the original Memorandum

- The Russian Federation has violated Articles 2 and 21 of the Convention by excluding Ukraine from accessing fisheries within 12 miles of the Ukrainian coastline, by exploiting such fisheries, and by usurping Ukraine's exclusive jurisdiction over the living resources of its territorial sea.
- The Russian Federation has violated Articles 56, 58, 61, 62, 73, and 92 of the Convention by excluding Ukraine from accessing fisheries within its exclusive economic zone, by exploiting such fisheries, and by usurping Ukraine's exclusive jurisdiction over the living resources of its exclusive economic zone.
- The Russian Federation has violated Articles 38 and 44 of the Convention by impeding transit passage through the Kerch Strait as a result of the Kerch Strait bridge.
- The Russian Federation has violated Articles 43 and 44 of the Convention by failing to share information with Ukraine concerning the risks and impediments to navigation presented by the Kerch Strait bridge.
- The Russian Federation has violated Articles 123, 192, 194, 204, 205, and 206 of the Convention by failing to cooperate and share information with Ukraine concerning the environmental impact of the Kerch Strait bridge.
- The Russian Federation has violated Articles 123, 192, 194, 198, 199, 204, 205, and 206 of the Convention by failing to cooperate with Ukraine concerning the May 2016 oil spill off the coast of Sevastopol.

***Коваль Д. Проміжне рішення у спорі щодо прав прибережних держав між Україною та Росією: коментар до рішення та можливий розвиток спору у майбутньому. – Стаття.***

21 лютого 2020 року *ad hoc* Трибунал, створений на підставі Додатку VII до Конвенції ООН з морського права 1982 р., виніс рішення щодо юрисдик-

ції у спорі про права прибережних держав у Чорному морі, Азовському морі та Керченській протоці. Рішення відкрило нову главу у судовому протистоянні між Україною та Російською Федерацією, що пов'язане з захопленням та експлуатацією нафтових родовищ на континентальному шельфі України, рибальством біля узбережжя Криму, судноплавством через Керченську протоку, будівництвом Керченського мосту, а також проведенням досліджень підводних археологічних та історичних пам'яток у Чорному морі. У Рішенні Трибунал розглянув шість заперечень Росії. Трибунал підтримав аргумент Росії, відповідно до якого, рішення щодо більшості вимог України стосовно прав у Чорному морі неминуче вимагатиме від Трибуналу першопочаткового вирішення питання про суверенітет над Кримом. Такий висновок Трибуналу означає, що він не матиме юрисдикції щодо згаданих вимог. Оцінюючи російський аргумент щодо статусу Керченської протоки та Азовського моря, Трибунал наголосив, що у рамках попереднього вивчення справи він не може остаточно визначити чи змінювався статус протоки та моря у момент набуття Україною незалежності та зможе вирішити це питання лише після слухань по суті. Трибунал не погодився із запереченнями Росії щодо того, що Конвенція ООН з морського права 1982 р. взагалі не регулює режим внутрішніх вод. Трибунал перелічив три приклади положень Конвенції, що застосовуються до внутрішніх вод. Вони регулюють: 1) межі внутрішніх акваторій; 2) реалізацію права мирного проходу у внутрішніх акваторіях, які раніше не розглядались як такі, і 3) захист та збереження морського середовища. Трибунал відхилив подальші заперечення Російської Федерації і встановив 20 серпня 2021 року як кінцевий термін подання меморандумів сторонами.

***Ключові слова*:** арбітраж за Конвенцією ООН з морського права 1982 р., арбітраж між Україною та Росією, врегулювання спорів за морським правом, Азовське море і Керченська протока, Чорне море, вимоги, пов'язані з суверенітетом.

***Коваль Д. Промежуточное решение в споре о правах прибрежных государств между Украиной и Россией: комментарий к решению и возможное развитие спора в будущем. – Статья.***

21 февраля 2020 года *ad hoc* Трибунал, созданный на основании Приложения VII к Конвенции ООН по морскому праву 1982 г., вынес решение о юрисдикции в споре о правах прибрежных государств в Черном море, Азовском море и Керченском проливе. Решение открыло новую главу в судебном противостоянии между Украиной и Российской Федерацией, связанном с захватом и эксплуатацией нефтяных месторождений на континентальном шельфе Украины, рыболовством у побережья Крыма, судоходством через Керченский пролив, строительством Керченского моста, а также

проведением исследований подводных археологических и исторических памятников в Черном море. В Решении Трибунал рассмотрел шесть возражений России. Трибунал поддержал аргумент России, согласно которому, решение относительно большинства требований Украины о правах в Черном море неизбежно потребует от Трибунала первоначального разрешения вопроса о суверенитете над Крымом. Такой вывод Трибунала означает, что он не будет иметь юрисдикции в отношении упомянутых требований. Оценивая российский аргумент относительно статуса Керченского пролива и Азовского моря, Трибунал отметил, что в рамках предварительного изучения дела он не может окончательно определить, изменялся ли статус пролива и моря в момент обретения Украиной независимости и сможет решить этот вопрос только после слушаний по существу. Трибунал не согласился с возражениями России о том, что Конвенция ООН по морскому праву 1982 г. вообще не регулирует режим внутренних вод. Трибунал перечислил три примера положений Конвенции, применяющихся к внутренним водам. Они регулируют: 1) границы внутренних акваторий; 2) реализацию права мирного прохода во внутренних акваториях, которые ранее не рассматривались как таковые, и 3) защиту и сохранение морской среды. Трибунал отклонил дальнейшие возражения Российской Федерации и установил 20 августа 2021 года как конечный срок подачи меморандумов сторонами.

***Ключевые слова*:** арбитраж по Конвенции ООН по морскому праву 1982 г., арбитраж между Украиной и Россией, урегулирование споров по морскому праву, Азовское море и Керченский пролив, Черное море, требования, связанные с суверенитетом.