

PCA Case No. 2019-28

IN THE MATTER OF AN ARBITRATION

- before -

**AN ARBITRAL TRIBUNAL CONSTITUTED UNDER ANNEX VII
TO THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

- between -

UKRAINE

- and -

THE RUSSIAN FEDERATION

- in respect of a -

**DISPUTE CONCERNING THE DETENTION OF UKRAINIAN NAVAL VESSELS AND
SERVICEMEN**

PROCEDURAL ORDER NO. 8

WHEREAS on 17 October 2023, the Russian Federation drew the Arbitral Tribunal's attention to the fact that Professor Donald McRae, President of the Arbitral Tribunal, and Judge Rüdiger Wolfrum, Arbitrator, had voted, as members of the Institute of International Law, in favour of the Institute's resolution of 1 March 2022, "Declaration of the Institute of International Law on Aggression in Ukraine", and stated that this fact "raises serious concerns about their impartiality and the prejudicial effect that may have on Russia's rights in the present proceedings, as well as on the fair administration of justice and party equality";

WHEREAS Professor McRae and Judge Wolfrum submitted to the Arbitral Tribunal their comments on the circumstances outlined in the letter of the Russian Federation of 17 October 2023 which were transmitted to the Parties on 2 November 2023; Professor McRae stated that "I do not consider that I lack impartiality in this case and I intend to continue to act in the same impartial way"; Judge Wolfrum stated that "I do not consider that I am lacking impartiality or independence from both parties in respect of the case before us";

WHEREAS Professor McRae and Judge Wolfrum have indicated to the other members of the Arbitral Tribunal that they did not wish to participate in any deliberations of the Arbitral Tribunal with respect to the challenges or the procedure to be adopted for their resolution;

WHEREAS on 24 November 2023, the Russian Federation (i) asserted challenges against Professor McRae and Judge Wolfrum and (ii) requested the Arbitral Tribunal, in consultation with the Parties and the Registry, to devise a procedure for deciding the challenges brought by the Russian Federation;

WHEREAS on 28 November 2023, Ukraine stated that "[g]iven the amount of time that has elapsed, Russia has waived any right to challenge the appointments of Professor McRae and Judge Wolfrum" and requested the Arbitral Tribunal, if it decides to establish a procedure to decide the Russian Federation's challenges, to proceed with a view to resolving the challenges as expeditiously as possible;

WHEREAS on 1 December 2023, the three unchallenged Members of the Arbitral Tribunal, with Judge Gudmundur Eiriksson presiding, decided, in accordance with Article 19, paragraph 1, of the Rules of Procedure of the Arbitral Tribunal, that Professor McRae and Judge Wolfrum shall not take part in any deliberations of the Arbitral Tribunal pending a decision on the challenges by the three unchallenged Members of the Arbitral Tribunal;

WHEREAS on the same date, the three unchallenged Members of the Arbitral Tribunal, with Judge Gudmundur Eiriksson presiding, communicated a proposal to the Parties in respect of the procedure to be followed for a decision on the challenges and invited the Parties' comments thereon by 8 December 2023;

WHEREAS on 8 December 2023, Ukraine submitted that it had no objections to the proposed procedure;

WHEREAS no comments on the proposed procedure were received from the Russian Federation;

THE THREE UNCHALLENGED MEMBERS OF THE ARBITRAL TRIBUNAL, WITH JUDGE GUDMUNDUR EIRIKSSON PRESIDING, HEREBY DECIDE:

The procedure for a decision on the challenges shall be as follows:

1. The Russian Federation's letter dated 24 November 2023 shall be taken as the principal statement of the grounds for the challenges to Professor McRae and Judge Wolfrum.

2. The Russian Federation is invited to submit by **Friday, 22 December 2023** a supplementary statement in response to Ukraine's objection that "[g]iven the amount of time that has elapsed, Russia has waived any right to challenge the appointments of Professor McRae and Judge Wolfrum".
3. Ukraine shall submit by **Friday, 19 January 2024** a response to the challenges as set out in the Russian Federation's letter dated 24 November 2023 and supplementary statement.
4. Professor McRae and Judge Wolfrum are invited to submit by **Friday, 26 January 2024** any comments they may have on the challenges.
5. The Russian Federation shall submit by **Wednesday, 7 February 2024** a reply on the challenges.
6. Ukraine shall submit by **Monday, 19 February 2024** a rejoinder on the challenges.
7. The Arbitral Tribunal shall thereafter issue a decision on the challenges, made by a majority vote of the three unchallenged Members of the Arbitral Tribunal.

Dated: 15 December 2023

ON BEHALF OF THE ARBITRAL TRIBUNAL



Judge Gudmundur Eiriksson
Acting President