Міністерство
закордонних справ
України

Михайлівська площа, 1
м. Київ, 01018, Україна
(044) 238 17 48, (044) 238 18 88 (fax), zsmfa@mfa.gov.ua, Код ЄДРПОУ 00026620

Ministry
of Foreign Affairs
of Ukraine

1 Mykhailivska Square
Kyiv, 01018, Ukraine
mfa.gov.ua

24 February 2024

By Electronic Mail

Mr. Martin Doe
Deputy Secretary-General
The Permanent Court of Arbitration
Peace Palace, Carnegieplein 2
2517 KJ The Hague
The Netherlands

Re: PCA Case No. 2019-28 (*Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen*)

Dear Mr. Doe:

Pursuant to your letter of 20 February 2024, Ukraine hereby submits its comments to Russia's submission of 22 February 2024.

The Tribunal invited Russia to comment on Ukraine's assertion, based on [redacted] that "the Russian Federation 'has admitted before other international tribunals that it acquired *actual knowledge* of the voting record [on the Institute of International Law Declaration] as early as 1 September 2023."[1] Rather than comment directly on that assertion, Russia's submission focuses on the alleged inadmissibility of [redacted] Russia's admission. Russia notably does not deny the underlying fact in the [redacted] that it admitted that it acquired *actual knowledge* of the voting record of the IDI Declaration as early as 1 September 2023. Also notable is Russia's continued unwillingness to disclose any alternative date on which it maintains it formed actual knowledge of the IDI voting record. Further, Russia does not offer to seek permission from the claimants in those cases to share the relevant sections of the challenge decisions with this Tribunal. In view of these circumstances, the Tribunal should treat it as established that the Russian Federation had actual knowledge of the IDI voting record as early as 1 September 2023. [redacted]

[1] Letter from the PCA to the Parties of 20 February 2024, p. 2 (alteration in original).

[redacted]

Russia also contends that actual knowledge it gained in other arbitral proceedings would not count as actual knowledge for purposes of the timeliness of *this* challenge, because this arbitration is managed by a different government ministry.[3] But there is no support for Russia's assertion that timeliness is determined only "by taking into account the knowledge of the representatives in this Arbitration."[4] To the contrary, parties are required to submit a challenge "within thirty days after the circumstances . . . became known *to that party*."[5] The party to this dispute is the Russian Federation, not the ministry assigned to manage the proceeding, and timeliness is accordingly determined on the basis of *Russia's* knowledge.

Consistent with this conclusion, a tribunal in the investor-State context rejected an argument by Argentina that the timeliness of its challenge should be determined on the basis of the knowledge acquired by its Attorney-General specifically, because "the right to object did not belong to the Attorney General *in persona* but to the Argentine Republic."[6] Any right to object in this case belongs to the Russian Federation, and the timeliness of the objection accordingly depends on the knowledge of the Russian Federation. Any other conclusion would be untenable, as a State's internal division of authorities may not be used as a shield internationally.[7]

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[3] Russia's Letter of 22 February 2024, ¶¶ 12-24.

[4] Russia's Letter of 22 February 2024. Russia again identifies a wide range of materials discussing the general role of a State's agent, but fails to identify any source supporting the position that *only* knowledge of a State's agent in a particular proceeding can determine timeliness for that proceeding. *See id*., ¶¶ 14-18.

[5] PCA Optional Rules for Arbitrating Disputes between Two States, Art. 11(1) (emphasis added). As discussed in Ukraine's prior submission, this provision of the Optional Rules reflects the practice of inter-State arbitral tribunals.

[6] *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Decision on the Application for Annulment of the Argentine Republic of 1 September 2002, ¶ 269.

[7] As Ukraine previously pointed out, this principle is reflected in general international law. *See* Ukraine's Rejoinder on Challenge, n. 26; *see also* Report of the International Law Commission on the Work of Its Fifty-Third Session, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, 53rd Session, U.N. Doc. No. A/56/10 (23 April–1 June, 2 July–10 August 2001), Chapter II, Commentary. Although Russia points out that the Articles concern questions of State responsibility, *see* Russia's Letter of 22 February 2024, ¶ 22, Russia offers no reason why the same imputability between government ministries would not apply to the question here.

Ukraine respectfully reiterates its request that the Arbitral Tribunal reject Russia's challenge to Professor McRae and Judge Wolfrum.

Respectfully submitted,

Ms. Oksana Zolotaryova
Agent for Ukraine