

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. 9
(RULING ON THE PROCEDURE FOR THE
APPOINTMENT OF REPLACEMENT ARBITRATORS)**

18 July 2024

ARBITRAL TRIBUNAL:

**Judge Gudmundur Eiriksson (Acting President)
Sir Christopher Greenwood
Professor Alexander N. Vylegzhanin**

REGISTRY:

The Permanent Court of Arbitration

I. INTRODUCTION

1. This Order addresses a request by the Russian Federation in its letter dated 10 July 2024 that the Arbitral Tribunal:
 - (a) Proceed with a ruling in respect of the proper procedure for appointment of replacement arbitrators;
 - (b) Inform the President of the International Tribunal for the Law of the Sea (“ITLOS”) that such a ruling is currently pending and that proceeding with making the appointments as requested by Ukraine would be considered inappropriate; and
 - (c) Subsequently, inform the Parties and the ITLOS President of the ruling on the proper procedure for appointing the replacement arbitrators in the present case.

II. PROCEDURAL BACKGROUND

2. On 6 March 2024, the Arbitral Tribunal adopted a Decision on the Challenges raised by the Russian Federation against Professor Donald McRae, President of the Arbitral Tribunal, and Judge Rüdiger Wolfrum, Member of the Arbitral Tribunal, for lack of independence and impartiality as a result of their votes in support of the Institute of International Law (*Institut de Droit International*) declaration of 1 March 2022, entitled “Declaration of the Institute of International Law on Aggression in Ukraine”. In accordance with Article 19, paragraph 1, of the Rules of Procedure of the Arbitral Tribunal and Procedural Order No. 8 dated 15 December 2023, the Decision on the Challenges was issued by the three unchallenged Members of the Arbitral Tribunal, with Judge Gudmundur Eiriksson presiding.
3. The three unchallenged Members of the Arbitral Tribunal, by two votes to one, upheld the Challenges to Professor McRae and Judge Wolfrum, with Judge Eiriksson and Professor Vylegzhanin voting in favour of the Decision and Sir Christopher Greenwood voting against. Sir Christopher Greenwood appended a Dissenting Opinion to the Decision.
4. By letters dated 6 March 2024, the Arbitral Tribunal communicated the Decision and the Dissenting Opinion to the Parties, to Professor McRae and to Judge Wolfrum.
5. On the same date, Professor McRae and Judge Wolfrum resigned from the Arbitral Tribunal, with reference to the Decision communicated to them in the letters of the Arbitral Tribunal dated 6 March 2024.

6. On 8 April 2024, the Russian Federation submitted its Rejoinder.
7. On 16 April 2024, the Arbitral Tribunal, noting that the submission of the Rejoinder of the Russian Federation completed the further round of written submissions set out in Procedural Orders No. 6 and 7, and that the Arbitral Tribunal had decided, in Procedural Order No. 7, that the week of 27 May 2024 should be reserved for an oral hearing in this case, invited the Parties to communicate their views on the possible form and timing of the further proceedings in this case.
8. On 29 April 2024, Ukraine proposed that the oral hearing that had been contemplated for the week of 27 May 2024 be postponed and noted that, once two replacement arbitrators had been appointed pursuant to Article 3 of Annex VII, the Parties and the full Arbitral Tribunal could proceed to schedule the oral hearing in the fall of 2024.
9. On 30 April 2024, the Russian Federation submitted that the hearing that had been tentatively scheduled for the week of 27 May 2024 could not proceed as planned and that it would only be feasible to assign new hearing dates once the Tribunal was complete. In the same letter, the Russian Federation proposed that the Arbitral Tribunal should develop and adopt an *ad hoc* procedure for the selection of replacement arbitrators following a successful challenge.
10. On 2 May 2024, the Arbitral Tribunal decided to postpone the oral hearings tentatively planned for the week of 27 May 2024 and invited the Parties to submit any comments they might have on each other's letters dated 29 and 30 April 2024.
11. On 6 May 2024, Ukraine opposed the Russian Federation's proposal regarding an *ad hoc* procedure for the selection of replacement arbitrators and noted that "[t]he Rules of Procedure for this arbitration, consistent with Annex VII, provide for arbitrator vacancies to be filled in the manner prescribed for the initial appointment of the arbitrator in question in Article 3 of Annex VII".
12. On 7 May 2024, the Russian Federation reiterated its request for guidance from the Arbitral Tribunal on the appropriate procedure for the appointment of replacement arbitrators and conveyed its understanding that neither Annex VII nor "the Rules of Procedure [...] provide for such a mechanism following an arbitrator's removal as a result of a successful challenge" and that this question would therefore have to be decided by the Arbitral Tribunal in accordance with Article 1, paragraph 2, of the Rules of Procedure.

13. On 9 May 2024, Ukraine rejected the Russian Federation’s proposed *ad hoc* procedure for the selection of replacement arbitrators as “contrary to both the Rules of Procedure and Annex VII”.
14. On 13 May 2024, the Russian Federation reiterated its position that “neither the Rules of Procedure nor Annex VII regulate[] the present situation” and it was “incumbent on the Tribunal to exercise its competence under Article 1(2) of the Rules of Procedure to regulate this issue on an *ad hoc* basis, like it did previously with the arbitrator challenge procedure”.
15. On 16 May 2024, the Arbitral Tribunal expressed its view that it would be beneficial for the Parties to engage in further efforts to reach agreement on the proper procedure for the appointment of replacement arbitrators. The Arbitral Tribunal also noted as follows with respect to the Parties disagreement on the proper interpretation and application of Article 3 of Annex VII to the Convention and the Rules of Procedure:

[T]he Acting President and the other members of the Tribunal note that the Parties disagree on the proper interpretation and application of Article 3 of Annex VII to the Convention and the Rules of Procedure. Without taking a position on this disagreement, they would preliminarily point out that, if requested by one or both Parties to rule on the dispute or should they feel that they should so rule *suo moto*, they might find that the proper application of Article 3 of Annex VII and the Rules of Procedure is not as straightforward as either Party submits. This reinforces their view that it would be beneficial for the Parties to engage in further efforts to achieve agreement, at least until, in the first instance, 30 May 2024, at which time a re-evaluation could take place. If the Parties were to agree to engage in these efforts, they should explicitly agree on a suspension of the possible limiting deadline of “two weeks” set in the final sentence of Article 3(d) of Annex VII, pending their further efforts.

16. On 17 May 2024, the Russian Federation *inter alia* reiterated its request that the Arbitral Tribunal formally establish an *ad hoc* procedure for the appointment of new arbitrators.
17. On 18 May 2024, Ukraine informed the Arbitral Tribunal of an agreement reached with the Russian Federation as follows:
 1. That the two-week deadline for requesting an appointment by the ITLOS president is suspended until at least 30 May, without prejudice to the respective parties’ positions on whether Article 3, Annex VII ultimately applies to the situation at hand; and
 2. That Russia will not later invoke the provisions of Article 3, Annex VII, and in particular the two-week period referenced in Article 3(d), to argue that Ukraine is precluded from requesting an appointment by the President of ITLOS after 19 May.
18. On 20 May 2024, the Arbitral Tribunal acknowledged receipt of the correspondence and noted that the Acting President and the other members of the Arbitral Tribunal remained prepared to consider any further views, proposals or requests which the Parties might choose to submit.

19. By separate letters dated 30 May 2024, the Parties indicated that they had agreed upon a set of criteria applicable to the selection of candidates and undertook to update the Arbitral Tribunal on further developments in their efforts to reach agreement.
20. On 21 June 2024, the Arbitral Tribunal indicated that it would be grateful to receive from the Parties any further updates they would choose to provide on their efforts to reach agreement on the appointment of replacement arbitrators.
21. On 29 June 2024, the Russian Federation (i) indicated that the Parties had been discussing the modalities of the selection procedure since the last update but had not reached consensus in this regard, (ii) set out its proposed selection procedure and commented on the selection procedure proposed by Ukraine and (iii) invited the Arbitral Tribunal to assist the Parties in reaching agreement in this respect, by advising on the modalities that might be acceptable to both Parties.
22. On 1 July 2024, Ukraine (i) confirmed that the Parties had continued to discuss the modalities of the selection procedure but had not been able to reach consensus in this regard, (ii) set out its proposed selection procedure and commented on the selection procedure proposed by the Russian Federation and (iii) noted its intent to proceed with requesting appointments by the ITLOS President if no agreement was reached by 5 July 2024.
23. On 3 July 2024, the Russian Federation (i) urged the Arbitral Tribunal to proceed expeditiously with issuing advice to the Parties regarding a possible mutually acceptable solution and (ii) invited the Arbitral Tribunal, as indicated in the Arbitral Tribunal's letter of 16 May 2024, to rule, upon either Party's request or *suo moto*, on the proper application of the Rules of Procedure and Article 3 of Annex VII to the Convention in respect of the appointment of replacement arbitrators and, in particular, on a prolongation of the negotiations sufficient for the Tribunal to issue its proposals and for the Parties to consider them or, alternatively, directly on the applicable procedure.
24. On 8 July 2024, Ukraine (i) reiterated its position regarding the selection procedure, (ii) objected to the Russian Federation's request that the Arbitral Tribunal impose an *ad hoc* procedure, (iii) indicated that it had sent a request for replacement arbitrators to the President of ITLOS, pursuant to Article 3 of Annex VII and (iv) requested that the Arbitral Tribunal await the ITLOS President's appointment of replacements for the two vacancies on the Arbitral Tribunal before making any other procedural or substantive rulings in this case.

25. On 10 July 2024, the Russian Federation (i) reiterated its position that, absent agreement of the Parties, the Arbitral Tribunal has the power to devise an ad hoc procedure for such appointments pursuant to Article 1(2) of the Rules of Procedure and (ii) requested that the Arbitral Tribunal:

- (a) Proceed with a ruling in respect of the proper procedure for appointment of replacement arbitrators;
- (b) Inform the ITLOS President that such a ruling is currently pending and that proceeding with making the appointments as requested by Ukraine would be considered inappropriate; and
- (c) Subsequently, inform the Parties and the ITLOS President of the ruling on the proper procedure for appointing the replacement arbitrators in the present case.

26. On 12 July 2024, the Acting President and the other members of the Arbitral Tribunal informed the Parties as follows:

Prior to the receipt of the Russian Federation's letter dated 10 July 2024, the Acting President and other members of the Arbitral Tribunal had instructed the Registrar to communicate to the Parties as follows:

The Acting President and the other members of the Arbitral Tribunal acknowledge receipt of Ukraine's letter of 8 July 2024 responding to their letter dated 5 July 2024 calling on Ukraine to submit any comments which they wish to provide on the Russian Federation's letter dated 3 July 2024 concerning the Parties' efforts to reach an agreement on the appointment of replacement arbitrators.

The Acting President and the other members of the Arbitral Tribunal, by a majority of two to one (In favour: Judge Gudmundur Eiriksson (Acting President) and Sir Christopher Greenwood; Opposed: Professor Alexander N. Vylegzhanin), take the following position on the appointment of replacement arbitrators:

The Acting President and the other members of the Arbitral Tribunal wish to emphasize that their suggestions to the Parties on the procedure for the appointment of replacement arbitrators were predicated upon the agreement of the Parties. In the absence of such agreement, the Arbitral Tribunal will not seek to provide any further guidance to the Parties on the further procedure.

27. The Acting President and the other members of the Arbitral Tribunal further advised that, in the light of the Russian Federation's request for a ruling in respect of the proper procedure for appointment of replacement arbitrators, they would proceed to deliver such a ruling on the Russian Federation's requests and would expect to do so within one week, without soliciting further pleadings from the Parties, such that this would not in their view result in an undue disruption of the proceedings before the ITLOS President. In addition, the Acting President and

the other members of the Arbitral Tribunal informed the Parties that they had instructed the Registrar to inform the Registrar of ITLOS to that effect. Lastly, in order to achieve greater clarity in the approach of the Parties to the issues raised, the Acting President and the other members of the Arbitral Tribunal also suggested that a consultation take place between the Acting President, with the presence of the Registrar, and the Agents of the Parties, and/or such persons as they designate, in an online meeting to be convened after the Acting President and the other members of the Arbitral Tribunal have in principle decided on their ruling, but before its publication.

28. On 18 July 2024, consultations were held in which the Agents and counsel for each Party, the Acting President of the Arbitral Tribunal, and the Registrar participated.

* * *

III. POSITIONS OF THE PARTIES

A. THE RUSSIAN FEDERATION'S POSITION

29. The Russian Federation argues that the procedure for the appointment of replacement arbitrators following a successful challenge is not expressly governed by Annex VII to the Convention or the Rules of Procedure. Accordingly, in the Russian Federation's view, the Arbitral Tribunal has the power to devise an *ad hoc* procedure for such appointments pursuant to Article 1, paragraph 2, of the Rules of Procedure and should exercise that power.¹
30. Conversely, the Russian Federation rejects Ukraine's position that the appointment procedure is governed by Article 6 of the Rules of Procedure or Article 3 of Annex VII to the Convention.² More specifically, the Russian Federation considers that Article 3, subparagraph (d) of Annex VII is inapplicable in the present case because it is predicated upon "receipt of the notification [of the dispute] referred to in article 1 of [Annex VII]". Absent such a notification, the Russian Federation considers that this provision cannot apply. The Russian Federation notes that Article 6 of the Rules of Procedure partially fills this gap in Annex VII by establishing a replacement mechanism that applies in cases of "withdrawal, incapacity or death of an arbitrator" but not in case of the removal of an arbitrator as the result of a successful challenge.³
31. The Russian Federation further argues that Article 3, subparagraph (f), of Annex VII to the Convention is inapplicable in the present circumstances. Although it provides that "any vacancy shall be filled in the manner prescribed for the initial appointment", it does not specify the starting point for the calculation of the 60-day period for the Parties' discussions on the appointment of replacement arbitrators.⁴ Article 3, subparagraph (d) of Annex VII, which refers to the "receipt of the notification referred to in article 1 of [Annex VII]" is likewise inapposite in the present case.⁵
32. According to the Russian Federation, Ukraine's decision to approach the ITLOS President disregards the Arbitral Tribunal's powers pursuant to Article 1, paragraph 2, of the Rules of

¹ Letter from the Russian Federation, dated 10 July 2024, pp. 1, 4.

² Letter from the Russian Federation, dated 10 July 2024, p. 1.

³ Letter from the Russian Federation, dated 10 July 2024, p. 3.

⁴ Letter from the Russian Federation, dated 10 July 2024, pp. 3-4.

⁵ Letter from the Russian Federation, dated 10 July 2024, p. 4.

Procedure, prejudices the Russian Federation's position and threatens the integrity of the arbitral process.⁶

B. UKRAINE'S POSITION

33. Ukraine objects to the Russian Federation's request for the Arbitral Tribunal to devise an *ad hoc* procedure for the appointment of replacement arbitrators as being contrary to the Rules of Procedure and Annex VII to the Convention.⁷
34. Ukraine argues that the resignations of Professor McRae and Judge Wolfrum could be considered as "withdrawals" under Article 6 of the Rules of Procedure, and not as "removals" as argued by the Russian Federation, such that Article 6 would be directly applicable and provide that the vacancies shall be filled in the manner prescribed for the initial appointments.⁸
35. Even if Article 6 were inapplicable in the present circumstances, Ukraine submits that the question of selecting replacement arbitrators would be governed by Article 1, paragraph 1, of the Rules of Procedure which provides that the arbitration shall be conducted in accordance with the relevant provisions of the Convention, including Annex VII. The relevant provision, according to Ukraine, is Article 3, subparagraph (f), of Annex VII which provides that "[a]ny vacancy shall be filled in the manner prescribed for the initial appointment" of Professor McRae and Judge Wolfrum, i.e. under the procedure set out in Article 3, subparagraphs (d) and (e), of Annex VII.⁹ Given this express stipulation, it is Ukraine's position that an *ad hoc* procedure that is not mutually agreed by the Parties to fill the vacancies on the Arbitral Tribunal is not permitted by the Rules of Procedure or Annex VII.¹⁰
36. Ukraine notes that the Parties have attempted to reach agreement on the selection of replacement arbitrators well beyond the 60-day period foreseen in Article 3, subparagraph (d), of Annex VII. In any event, sixty days have lapsed since 6 May 2024 which is the date the Russian Federation had argued the 60-day period under Article 3 subparagraph (d), should begin to run.¹¹

⁶ Letter from the Russian Federation, dated 10 July 2024, p. 5.

⁷ Letter from Ukraine, dated 8 July 2024, p. 2.

⁸ Letter from Ukraine, dated 8 July 2024, p. 1.

⁹ Letter from Ukraine, dated 8 July 2024, p. 1.

¹⁰ Letter from Ukraine, dated 8 July 2024, p. 1.

¹¹ Letter from Ukraine, dated 8 July 2024, p. 2.

37. Given the Parties' failure to reach agreement on replacement arbitrators, Ukraine considers that the only recourse is to seek appointments from the President of ITLOS.¹²

IV. ANALYSIS OF THE ARBITRAL TRIBUNAL

38. The constitution of arbitral tribunals for the purpose of proceedings under Annex VII to the Convention is dealt with in Article 3 of Annex VII, which reads as follows:

Article 3
Constitution of arbitral tribunal

For the purpose of proceedings under this Annex, the arbitral tribunal shall, unless the parties otherwise agree, be constituted as follows:

- (a) Subject to subparagraph (g), the arbitral tribunal shall consist of five members.
- (b) The party instituting the proceedings shall appoint one member to be chosen preferably from the list referred to in article 2 of this Annex, who may be its national. The appointment shall be included in the notification referred to in article 1 of this Annex.
- (c) The other party to the dispute shall, within 30 days of receipt of the notification referred to in article 1 of this Annex, appoint one member to be chosen preferably from the list, who may be its national. If the appointment is not made within that period, the party instituting the proceedings may, within two weeks of the expiration of that period, request that the appointment be made in accordance with subparagraph (e).
- (d) The other three members shall be appointed by agreement between the parties. They shall be chosen preferably from the list and shall be nationals of third States unless the parties otherwise agree. The parties to the dispute shall appoint the President of the arbitral tribunal from among those three members. If, within 60 days of receipt of the notification referred to in article 1 of this Annex, the parties are unable to reach agreement on the appointment of one or more of the members of the tribunal to be appointed by agreement, or on the appointment of the President, the remaining appointment or appointments shall be made in accordance with subparagraph (e), at the request of a party to the dispute. Such request shall be made within two weeks of the expiration of the aforementioned 60-day period.
- (e) Unless the parties agree that any appointment under subparagraphs (c) and (d) be made by a person or a third State chosen by the parties, the President of the International Tribunal for the Law of the Sea shall make the necessary appointments. If the President is unable to act under this subparagraph or is a national of one of the parties to the dispute, the appointment shall be made by the next senior member of the International Tribunal for the Law of the Sea who is available and is not a national of one of the parties. The appointments referred to in this subparagraph shall be made from the list referred to in article 2 of this Annex within a period of 30 days of the receipt of the request and in consultation with the parties. The members so appointed shall be of different nationalities and may not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute.

¹² Letter from Ukraine, dated 8 July 2024, p. 2.

- (f) Any vacancy shall be filled in the manner prescribed for the initial appointment.
 - (g) Parties in the same interest shall appoint one member of the tribunal jointly by agreement. Where there are several parties having separate interests or where there is disagreement as to whether they are of the same interest, each of them shall appoint one member of the tribunal. The number of members of the tribunal appointed separately by the parties shall always be smaller by one than the number of members of the tribunal to be appointed jointly by the parties.
 - (h) In disputes involving more than two parties, the provisions of subparagraphs (a) to (f) shall apply to the maximum extent possible.
39. Professor McRae and Judge Wolfrum were appointed as members of the Arbitral Tribunal, and Professor McRae as its President, by the ITLOS President. Thus, in accordance with Article 3, subparagraph (e), of Annex VII, “the manner prescribed for [their] initial appointment” under subparagraph (f) for filling the vacancies resulting from the successful challenges to Professor McRae and Judge Wolfrum is that outlined in Article 3, subparagraph (e).
40. The “notification referred to in article 1 of this Annex”, is the written notification addressed by Ukraine to the Russian Federation by which it submitted the dispute between them to the arbitral procedure provided for in Annex VII. The notification dated 1 April 2019 was received by the Russian Federation on the same date. Clearly, then, the term “the manner prescribed” cannot incorporate time periods commencing on the receipt of such notification. The Parties have differed on how, instead, the time period referred to in subparagraph (d), “within 60 days of receipt of the notification referred to in article 1 of this Annex”, is to be read.
41. The relationship between the provisions of Annex VII and the Rules of Procedure of the Arbitral Tribunal is set out in Articles 4 and 5 of Annex VII, which read as follows:

Article 4
Functions of arbitral tribunal

An arbitral tribunal constituted under article 3 of this Annex shall function in accordance with this Annex and the other provisions of this Convention.

Article 5
Procedure

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedure, assuring to each party a full opportunity to be heard and to present its case.

42. The Arbitral Tribunal has implemented this latter provision in Article 1 of its Rules of Procedure, which reads:

SECTION I. INTRODUCTORY RULES

Scope of Application

Article 1

1. The arbitration shall be conducted in accordance with these Rules and the relevant provisions of the 1982 United Nations Convention on the Law of the Sea (the “Convention”), including Annex VII to the Convention. These Rules are subject to such modification or additions as the Arbitral Tribunal may determine after ascertaining the views of the Parties.
2. To the extent that any question of procedure is not expressly governed by these Rules or by Annex VII to the Convention or other provisions of the Convention, the question shall be decided by the Arbitral Tribunal after ascertaining the views of the Parties.

[...]

43. In Article 6 of its Rules of Procedure, the Arbitral Tribunal chose to deal with the application of the term in Article 3, subparagraph (e), of Annex VII to the Convention, “the manner prescribed for [their] initial appointment”, in the case of filling a vacancy in the event of withdrawal, incapacity or death of an arbitrator. Article 6 reads:

Replacement of an Arbitrator

Article 6

1. In the event of withdrawal, incapacity or death of an arbitrator during the course of the proceedings, the vacancy shall be filled in the manner prescribed for the initial appointment of the arbitrator in question in Article 3 of Annex VII to the Convention, with the understanding that the time periods stipulated in that Article should be calculated from the date of notification to the Parties of the withdrawal, incapacity or death of the arbitrator.
2. In the event that an arbitrator is replaced in accordance with paragraph 1, the proceedings shall resume at the stage where the replaced arbitrator ceased to perform his or her functions, unless the Arbitral Tribunal decides otherwise.

44. Notably, Article 6, paragraph 1, of the Rules of Procedure does not refer to the event of disqualification of an arbitrator upon a successful challenge by a Party.

45. In its correspondence with the Parties, the Arbitral Tribunal has been careful not to make rulings on what would be a proper interpretation of the provisions of Annex VII. It set out its position in its letter dated 16 May 2024, which reads, in relevant part, as follows:

It will be recalled that, in its letter to the Parties of 9 May 2023, to which the Russian Federation has made reference in its letter of 30 April 2024, the Arbitral Tribunal expressed its view that a variance in the terms of Article 3 of Annex VII to the Convention and the Rules of Procedure to allow a replacement arbitrator to be appointed by the Russian Federation would be “in the interests of good order in the progression of th[e] arbitration”. In a similar vein, the Acting President and the other members of the Arbitral Tribunal are of the view that it is in the interests of good order in the progression of this arbitration that the

arbitrators to replace Professor McRae and Judge Wolfrum be appointed by agreement between the Parties, if such agreement is possible.

Accordingly, since it is clear that the efforts to reach agreement have only recently commenced, the Acting President and the other members of the Arbitral Tribunal express the view that it would be beneficial for the Parties to engage in further efforts to achieve such agreement.

However, the Acting President and the other members of the Tribunal note that the Parties disagree on the proper interpretation and application of Article 3 of Annex VII to the Convention and the Rules of Procedure. Without taking a position on this disagreement, they would preliminarily point out that, if requested by one or both Parties to rule on the dispute or should they feel that they should so rule *suo moto*, they might find that the proper application of Article 3 of Annex VII and the Rules of Procedure is not as straightforward as either Party submits. This reinforces their view that it would be beneficial for the Parties to engage in further efforts to achieve agreement, at least until, in the first instance, 30 May 2024, at which time a re-evaluation could take place. If the Parties were to agree to engage in these efforts, they should explicitly agree on a suspension of the possible limiting deadline of “two weeks” set in the final sentence of Article 3(d) of Annex VII, pending their further efforts.

The Acting President and the other members of the Arbitral Tribunal remain prepared to consider any further views or proposals which the Parties may choose to submit.

46. The Arbitral Tribunal notes especially its reference to the desirability of agreement between the Parties. It recalls its decision setting out this aspect of its position, quoted in its letter to the Parties dated 12 July 2024, as follows:

The Acting President and the other members of the Arbitral Tribunal, by a majority of two to one (In favour: Judge Gudmundur Eiriksson (Acting President) and Sir Christopher Greenwood; Opposed: Professor Alexander N. Vylegzhanin), take the following position on the appointment of replacement arbitrators:

The Acting President and the other members of the Arbitral Tribunal wish to emphasize that their suggestions to the Parties on the procedure for the appointment of replacement arbitrators were predicated upon the agreement of the Parties. In the absence of such agreement, the Arbitral Tribunal will not seek to provide any further guidance to the Parties on the further procedure.

47. The Russian Federation, in its letter dated 3 July 2024, refers to a possible *suo moto* ruling of the Arbitral Tribunal. In this connection, it is important to point out that, in its letter dated 16 May 2024, the Arbitral Tribunal was addressing the question of the beginning point of the “60-day period” referred to in Article 3 of Annex VII to the Convention, a question on which, as noted above, the Parties were not agreed at that time. However, since that time, this question has become moot.
48. In its request for a ruling, the Russian Federation has not identified any question of procedure which, in the terms of Article 1, paragraph 2, of the Rules of Procedure of the Arbitral Tribunal, “is not expressly governed by these Rules [of Procedure] or by Annex VII to the Convention or

other provisions of the Convention”, and the Arbitral Tribunal will not rule, in the abstract, on questions outside this scope.

49. Ukraine has now applied to the ITLOS President to appoint replacements for Professor McRae and Judge Wolfrum. It is not for this Arbitral Tribunal to comment on how the ITLOS President should respond to that request.

V. RULING OF THE ARBITRAL TRIBUNAL ON THE REQUEST OF THE RUSSIAN FEDERATION

50. Accordingly, for the reasons set out above, the Acting President and the other members of the Arbitral Tribunal, by a majority of two to one, *reject* the request of the Russian Federation that the Arbitral Tribunal rule on the procedure for the appointment of replacement arbitrators.

IN FAVOUR: Judge Gudmundur Eiriksson, Sir Christopher Greenwood

AGAINST: Professor Alexander N. Vylegzhanin

Professor Vylegzhanin appends a Dissenting Opinion to this Order.

Dated: 18 July 2024

ON BEHALF OF THE ARBITRAL TRIBUNAL



Judge Gudmundur Eiriksson
Acting President