Mr. Martin Doe
Deputy Secretary-General
Permanent Court of Arbitration

« 6 » September 2024

RE: PCA Case No. 2019-28 – Ukraine v. The Russian Federation

Dear Mr. Doe,

The Russian Federation has taken note of the decision of the President of the International Tribunal for the Law of the Sea ('ITLOS') dated 8 August 2024 to appoint Mr James Kateka and Ms Joanna Mossop to replace Professor Donald McRae and Judge Rüdiger Wolfrum following their removal as members of the Arbitral Tribunal following the successful challenges brought by the Russian Federation. While Ms Mossop subsequently withdrew from the proceedings due to a conflict of interests, Mr Kateka communicated his Declaration of Acceptance and Statement of Impartiality and Independence, together with a Disclosure Statement, on 15 August 2024.

At the outset, it should be recalled that the appointment of Mr Kateka and Ms Mossop as replacement arbitrators took place against the background of – and in plain disregard for – the firm and well-substantiated objections raised by the Russian Federation with respect to the procedure applied to replace the disqualified arbitrators. In this respect, the Russian Federation conveyed in its Letter dated 9 August 2024 that this purported appointment was vitiated by grave procedural irregularities manifested in the involvement of the President of ITLOS as the appointing authority in the absence of the necessary legal basis under the Rules of Procedure or Annex VII of UNCLOS. In particular, the President of ITLOS elected to act on Ukraine's unwarranted unilateral request to make the respective appointments with reference to Article 3(f) of Annex VII, which had never been properly triggered in the first place. Despite the inapplicability of the said procedure to the situation at hand (as confirmed by the Arbitral Tribunal's findings in the Procedural Order No. 9), the President of ITLOS espoused the flawed interpretation of the procedural rules advocated by Ukraine and proceeded to make the appointments.

Furthermore, those appointments were eventually made in disregard of the requirements to hold consultations with the Parties as per Article 3(e) of Annex VII. First, the President of ITLOS sent out invitations to the Parties before the Tribunal's position was made

clear in its Procedural Order No. 9. Then, after the Order was issued, the President refused to adjust his proposed timing of the in-person consultations, despite the known difficulties with flights from Russia to Germany and issuance of entry visas by German authorities to Russian travellers. Finally, the President decided to hold consultations 'by correspondence', without inviting the Parties to submit their views on the key procedural issues, or reacting in any way to the concerns regarding these issues as indicated in the Russian Federation's letters. In the end, despite his knowledge of the Russian Federation's concerns and the contents of the Tribunal's Procedural Order No. 9, the President of ITLOS limited his 'written consultations' to requesting the Parties to submit a confidential list of ten candidates and comment on the UN list referred to in Article 2 of Annex VII, in an apparent effort to follow through with Ukraine's demand to select arbitrators by a 'double blind list exchange procedure', which the Russian Federation had earlier rejected during bilateral consultations with Ukraine.

Even so, the Russian Federation proposed to submit such a list and provide such comments at an in-person meeting in Hamburg, given that the critical procedural issues would also be discussed and resolved during these consultations. However, this offer was summarily rejected by the President of ITLOS without any explanation or follow-up. As a result, no such list was submitted, no comment provided, and no material discussion on any matter of relevance to the resolution of the issues was held.

It is clear, therefore, that the President of ITLOS never held genuine consultations with the Parties to address the issues surrounding the replacement procedure, nor to strike a balance between the concerns of the Parties. Instead, in disregard of the position of the Russian Federation and the standing of the Arbitral Tribunal, he took for granted the ill-grounded position of Ukraine without allowing any discussion on the matter. Consequently, the requirements to hold consultations with the Parties as per Article 3(e) were in any event not satisfied.

Mindful of the above-described events, the Russian Federation feels compelled to reiterate its grave concerns regarding the circumstances of Mr Kateka's appointment. An appointment procedure tainted by such severe irregularities calls into question the authority of the Arbitral Tribunal and the proper performance of its judicial function. Any decision rendered by an improperly constituted Arbitral Tribunal would be a nullity and would not lead to the settlement of the dispute between the Parties.

Compounded by the circumstances of Mr Kateka's and Ms Mossop's wrongful appointments, the Russian Federation is also alarmed by the fact that both Mr Kateka's and Ms Mossop's candidacies as arbitrators in the present proceedings, in essence, suffer from the same deficiencies that led to the disqualification of Judge Wolfrum and Professor McRae.

In this respect, it is recalled that the challenges to Judge Wolfrum and Professor McRae were prompted by their voting in favour of the Declaration of the *Institut de Droit International* 'On Aggression in Ukraine' dated 1 March 2022 (the 'Declaration'). The Declaration indicates that the Institute's members 'are following with dismay the ongoing Russian military operations in Ukraine' and 'firmly denounce the aggression for which the Russian Federation is responsible'.[1] It further proclaims the Russian Federation as responsible for a 'serious breach of obligations arising from peremptory norms of international law' and concludes that 'Russia exposes itself to appropriate measures in accordance with international law'.[2]

The Russian Federation reiterates that the Declaration's accusatory language attests to the existence of justifiable doubts as to the impartiality and independence of arbitrators that have aligned themselves with it.[3] Indeed, the Declaration specifically refers to the views of '[t]he members of the Institute of International Law'[4] and, therefore, conveys their personal views rather than the position of the IDI as an institution.[5] Considering that the Declaration is devoted to the military confrontation between the Parties to the present proceeding, in the circumstances where Ukraine persistently invokes the 'aggression' against it to undermine the Russian Federation's position, there is an appreciable risk that the arbitrators may be unduly influenced by their views reflected in the Declaration.[6]

The unchallenged members of the Arbitral Tribunal upheld the Russian Federation's position and held that 'votes in favour of the IDI Declaration raise justifiable doubts as to

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[1] Institute of International Law, Declaration on the Aggression in Ukraine, *Yearbook of the Institute of International Law*, 2022-2023, Vol. 83, p. 19.

[2] *Ibid*., p. 20.

[3] *See* the Russian Federation's Letter dated 17 October 2023; the Russian Federation's Letter dated 24 November 2023, ¶¶21-23, 34-41; Reply on the Challenges, ¶60.

[4] Institute of International Law, Declaration on the Aggression in Ukraine, *Yearbook of the Institute of International Law*, 2022-2023, Vol. 83, p. 19.

[5] The Russian Federation's Letter dated 24 November 2023, ¶23. See also Reply on the Challenges, ¶61.

[6] The Russian Federation's Letter dated 24 November 2023, ¶¶23, 38-40.

their impartiality in this arbitration.'[7] The Decision on Challenges dated 6 March 2024 confirms that the inquiry concerning the impartiality of arbitrators should not be conducted in an overly restrictive or formalistic manner. Instead, due regard should be given to the 'relevant facts and circumstances' of each case to determine whether 'there is a likelihood that an arbitrator may be influenced by factors other than the merits of the case as presented by the disputing parties in reaching his or her decision.'[8]

Accordingly, the Arbitral Tribunal determined that in this context, it might be difficult for the arbitrators to demarcate the particular legal issues in dispute in the present case from the views expressed in the Declaration. The Decision on Challenges thus reaffirms that the endorsement of the Declaration by an arbitrator creates an inherent risk that the present case will not be considered with an open mind:

> Ukraine has drawn the attention of the Arbitral Tribunal to the decisions by the appointing authorities in the investment treaty cases of *Belbek v. Russian Federation*, *Privatbank v. Russian Federation* and *Akhmetov v. Russian Federation*. Without being privy to the particular reasoning in these cases, it may well have been easier to disassociate the text of the IDI Declaration from the issues addressed by the relevant investor-State arbitral tribunals. Indeed, Judge Greenwood has made a credible attempt in this respect in his Dissenting Opinion. The other unchallenged Members of the Arbitral Tribunal are, however, unable to agree that the issues faced can be confined in this rather narrow fashion, in circumstances where the sovereign weight of the armed and police forces have been aligned against the military vessels of a foreign State with the consequent alleged deprivation of the rights of military personnel of a foreign State.[9] [Emphasis added]

Ms Mossop chose to withdraw from the Arbitration without indicating the reason for such withdrawal, except a generalized reference to an existing 'conflict of interest'.

The Russian Federation subsequently became aware that the actual reason for Ms Mossop's withdrawal was her support for another public declaration similar in content to the IDI Declaration. Specifically, she appears among the signatories of the '*Statement of concern on the conflict in Ukraine'* issued by the Australian and New Zealand Society of International

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[7] Decision on Challenges, ¶101.

[8] *Ibid*., ¶90.

[9] *Ibid*., ¶102.

Law (ANZIL).[10] The said Statement, much like the IDI declaration, 'condemn[ed] the devastating and unjustified Russian aggression in Ukraine' as 'a gross violation of international law', qualifying the conduct of the Russian Federation as 'pos[ing] a threat not only to peace and security within Europe, but also to the global rules-based order'; it also goes on to express 'solidarity with… the Ukrainian people' and invite 'all UN Member states to condemn the actions of the Russian government in Ukraine'.[11]

Despite this fact, which constituted clear evidence of bias, Ms Mossop was purportedly appointed as an arbitrator by the President of ITLOS. Furthermore, this plainly prejudicial fact was not made known to the Russian Federation by either the President of ITLOS, or Ms Mossop herself, leaving the Russian Federation unable to discern the potential threat to its legitimate interests. If not for Ms Mossop's recusal, the integrity of the Tribunal would have been severely undermined.

The same situation arises, regrettably, in respect of Mr Kateka. A member of the IDI, he participated in the drafting and voting process of the Declaration. Despite Mr Kateka's abstention from voting, his comments on the Declaration published in the Institute's Yearbook reveal that he aligns with the substance of the Declaration. For the sake of completeness, Mr Kateka's comments are reproduced below in full:

> I appreciate the circumstances and the environment which have prompted the draft. Let me state at the outset that I oppose any illegitimate forcible action by any State. The Institute has previously dealt with the specific use of force only on two occasions. In 1877 at the Zurich Session and in 2003 at the Bruges Session. This is thus the third time. At the Bruges Session, in spite of not spelling out the States that used force, there was opposition by some Members who argued that the Institute is a learned society that should not get involved in political matters that would prejudice its standing. I wish to observe here that the Institute is the highest body—analogy of a Supreme Court—in promoting the progress of international law. The Institute is composed of international lawyers from different parts of the world. Its pronouncements must be balanced and objective. Hence my appeal for the toning down of some of the language. The title should be 'Declaration of the Institute of International Law on the Use of Force in Ukraine'. In the second paragraph of the text, line 4 of the English text, we should replace 'firmly denounce the

[10] ANZIL, Statement of concern on the conflict in Ukraine (4 March 2022), available at: https://anzsil.org.au/resources/Statement%20of%20Concern%20on%20the%20Conflict%20in%20Ukraine%20from%20Members%20and%20Supporters%20of%20the%20Australian%20and%20New%20Zealand%20Society%20of%20International%20Law.pdf

[11] *Ibid*.

> aggression' with 'deplores the use of force'. Consequential changes of 'use of force' should be made wherever 'aggression' is used. In the 5th line, delete 'massive'. The paragraphs after para 3 should be numbered 4, 5, 6, and 7. I am making the above suggestions in good faith to tone down the language. In the 2003 Bruges Declaration such mild language was used. I am afraid we could be accused of double standards if we act with strong language.[12]

First, Mr Kateka indicated that he 'appreciate[s] the circumstances and the environment which have prompted the draft' and 'oppose[s] any illegitimate forcible action by any State,'[13] thus showing agreement with the Declaration's assertion that the actions of the Russian Federation were unlawful.

Second, the amendments he proposed to the text were substantially confined to replacing the word 'aggression' with the phrase 'use of force'.[14] On this condition, he appeared to be content with having the phrase 'the Institute sees it as its duty to deplore the use of force for which the Russian Federation is responsible through its… military intervention in Ukraine'[15] be featured in the Declaration.

Mr Kateka's statement also did not include any objections regarding other harsh pronouncements made in the Declaration against the Russian Federation and in support of Ukraine, such as:

- 'The Institute of International Law emphasizes that this action [by the Russian Federation] is contrary to the most fundamental principles of international law… cannot find any legal justification… is inconsistent with specific commitments made by Russia to Ukraine… and cannot be justified as lawful "countermeasures"';[16]
- '[T]he international responsibility of the Russian Federation is engaged for its serious breach of obligations arising from peremptory norms of international law and that, as such, Russia exposes itself to appropriate measures in

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[12] Institute of International Law, Declaration on the Aggression in Ukraine, *Yearbook of the Institute of International Law*, 2022-2023, Vol. 83, pp. 22-23.

[13] *Ibid*., p. 22.

[14] *Ibid*., p. 23.

[15] *Ibid*., p. 19. [Emphasis added]

[16] *Ibid*., pp. 19-20.

accordance with international law and without prejudice to Ukraine's right of self-defence';[17]

- '[T]the ongoing military operations call *ipso facto* for the application of international humanitarian law, including the rules relating to occupation… [P]ersons responsible for international crimes as defined by international law may be prosecuted and sentenced in accordance with the law in force';[18] etc.

The absence of objections to these claims by Mr Kateka evidences his alignment with their substance. This text, in his own words, he would consider "balanced and objective".

Third, it is highly relevant that Mr Kateka recalled the Institute's 2003 Bruges Declaration. That document, apparently adopted in response to the invasion of Iraq by USA and its allies (igniting a two-decade war that led to hundreds of thousands of civilian casualties and the rise of ISIS), contained no reference to any specific States, nor a single word of condemnation regarding their conduct, nor even a precise indication of the events causing its adoption (Iraq was never mentioned). The Institute limited itself to 'reaffirm[ing] that the use of force by States in international relations is governed by international law' and 'appealing to the universal conscience of mankind… request[ing] all States to respect the above-mentioned fundamental principles'.[19] No question of international responsibility was raised in that Declaration; on the contrary, its phrasing suggested that 'all States' somehow share the moral burden of these deplorable acts, thus seeking to simultaneously absolve actual perpetrators and implicate States unrelated to the conduct in question. Finally, the Bruges Declaration contained an appreciative nod towards the goals of the so-called 'War on Terror', stating that the 'Institute <u>equally reaffirms</u> that acts of terrorism, from whatever source, are prohibited under international law and constitute an international crime'[20] [<u>emphasis</u> added], thereby putting these goals on an equal footing with the rest of the text.

Mr Kateka's limited editorial suggestions to the 2022 Declaration reach nowhere near what he calls 'mild language' of the Bruges Declaration. It appeared acceptable for him to condemn the Russian Federation for alleged violations of peremptory rules of international

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[17] *Ibid*., p. 20.

[18] *Ibid*.

[19] Institut de Droit International, Bruges Declaration on the Use of Force, 2 September 2003, pp. 1, 3, available at: https://www.idi-iil.org/app/uploads/2017/06/2003_bru_en.pdf.

[20] *Ibid*., p. 2.

law, to deny the Russian Federation 'any legal justification' and hold it 'exposed' to 'appropriate measures'. In contrast to the Bruges Declaration, no mention is made in the 2022 Declaration or Mr Kateka's statement of possible legal grounds for the actions of the Russian Federation, except to deny any such possibility, foregoing any chance of parity by not pointing to any wrongdoing by the other party. The Declaration left entirely unmentioned Ukraine's deplorable acts during its so-called 'Anti-Terrorist Operation', including its constant attacks on civilian population of Donbass, its devastating blockade of the region, its repeated violations of the Minsk Agreements, as well as the Donbass people's struggle for independence.

This shows that Mr Kateka has, in fact, stood firmly in support of the 2022 Declaration, and his limited objections to some of its wording did not affect his overall alignment with its substance, which was decidedly and disproportionately antagonistic towards the Russian Federation, while at the same time willfully ignorant towards the actions of Ukraine.

Fourth, these concerns are further corroborated and exacerbated by Mr Kateka's activities on social media. For instance, on 22 February 2022, he reposted on his X (then Twitter) account an entry praising the Kenyan ambassador's speech before the UN Security Council that 'perfectly explains how people across Africa understand Ukraine, and what the Kremlin's acts of aggression mean in our post-colonial world'[21] [emphasis added]:

[21] *See* X, James Kateka's Account, Entry dated 22 February 2024, available at: https://x.com/jlkateka.

This further exemplifies that despite Mr Kateka's ostensible disagreement with the use of the word 'aggression' to describe the Russian Federation's conduct in the Declaration, he did in fact personally agree with this characterization in both form and substance.[22] His concern for the wording of the Declaration was apparently motivated by a desire for the

[22] As the Delhi High Court has held, 'The retweeting of the content in the present case which was originally created by some other person who did not have as much public following as the present petitioner, by virtue of the petitioner retweeting that content, represented to the public at large that he believed the content created by another person to be true. It has to be held so since the general public would ordinarily believe that the person retweeting such content on his own Twitter account, must have understood, verified and believed the content to be true.' [Emphasis added]. See *Arvind Kejriwal vs State & Anr*, Delhi High Court, 5 February 2024, available at: https://indiankanoon.org/doc/59702685/

Institute to maintain a modicum of neutrality rather than his own personal convictions, which were fully aligned with the Declaration.

In addition, the above-mentioned X post puts the actions of the Russian Federation in the context of 'colonialism', thus portraying the Russian Federation as a 'coloniser' in relation to Ukraine. Apart from the political charge of this allegation, it also bears direct relevance to Mr Kateka's position regarding the present Arbitration, in light of Ukraine's repeated public claims that Russia has historically 'colonised' Crimea, and that the Russian-Ukrainian conflict is a 'colonial war'.[23]

The Russian Federation takes note of the latest arbitral practice confirming that arbitrators must strive to refrain from making any statements in social media that could attest to their predisposition towards one of the parties and put into question their impartiality. In a recent UNCITRAL proceeding brought by a Ukrainian oligarch against the Russian Federation, the appointing authority upheld the Russian Federation's challenge against arbitrator Ms Andrea Bjorklund based on her LinkedIn post. That post sought to raise money and supply medical aid to Ukrainian lawyers who joined the Ukrainian Armed Forces in 2022. Ms Bjorklund 'described the lawyers as "Ukrainian defenders" whose lives were in

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[23] *See*, e.g., Official Website of the President of Ukraine, *It is important to do everything so that Russia can never again blackmail either Ukraine or France - speech by President Volodymyr Zelenskyy at the annual meeting of French entrepreneurs under the auspices of the MEDEF business association* (29 August 2022), available at: https://www.president.gov.ua/en/news/vazhlivo-robiti-vse-shob-rosiya-bilshe-nikoli-ne-mogla-shant-77381: 'Russia's war against Ukraine is not just a colonial war in the worst sense of the word, it is not just an attempt to appropriate our land, resources or the potential of our people. Through the destruction of Ukraine, Russia is trying to destroy the hope of all nations near its borders and all peoples in the territory of Russia itself that freedom will really work' [emphasis added].

Mission of the President of Ukraine in the Autonomous Republic of Crimea, *The Verkhovna Rada of Ukraine Adopted the Statement on the Steadfastness of the State Policy of Ukraine on the De-occupation and Reintegration of the Autonomous Republic of Crimea and the City of Sevastopol* (4 September 2024), available at: https://ppu.gov.ua/en/press-center/verkhovna-rada-ukrainy-pryyniala-zaiavu-pro-nepokhytnist-derzhavnoi-polityky-ukrainy-shchodo-deokupatsii-ta-reintehratsii-avtonomnoi-respubliky-krym-i-mista-sevastopolia/: 'Another priority of the state policy is the reintegration of Crimea after de-occupation and the implementation of transitional justice principles. In addition, it remains essential to preserve and restore the historical and cultural heritage of Ukraine in Crimea as a way to save national and cultural identity. In particular, Ukraine will continue to restore historical justice for the colonial policy and genocidal crimes committed against Ukraine, including the deportation of the Crimean Tatar people by the Soviet totalitarian regime in 1944' [emphasis added].

Aljazeera, *Why did the Ukraine Peace Summit fail?* (23 June 2024), available at: https://www.aljazeera.com/opinions/2024/6/23/why-did-the-ukraine-peace-summit-fail: 'Ukraine's own rhetoric, however, has also contributed to the failure. Back in 2022, after the start of Russia's full-out aggression, Zelenskyy and members of his government attempted to secure sympathy of the Global South by presenting Ukraine as a victim of a colonial war waged by Russia' [emphasis added].

danger "every second" and who were "not properly equipped to resist Russian attacks". She called for support "in their fight" against Russia'.[24]

In a similar vein, the Swiss Federal Tribunal annulled an arbitral award rendered against a Chinese athlete by an arbitrator who criticised on his social media profile the Chinese practice of consuming dog meat.[25] The Federal Tribunal opined that the particularly emotional and forceful expressions employed by the arbitrator in his post raised justified concerns about his ability to render an objective and impartial decision in a case involving a Chinese national.[26]

In line with these precedents, Mr Kateka's conduct gives rise to justifiable doubts regarding his impartiality much in the same way as Judge Wolfrum's and President McRae's did. Since Mr Kateka's public statements and other acts reveal his agreement with the contents of the Declaration in both form and substance, the modality of his participation in its development, including his choice to eventually abstain from voting (apparently to preserve the Institute's reputation rather than out of personal disagreement with the views expressed in the Declaration), does not dispel these doubts.

Finally, the Russian Federation notes that Mr Kateka did not indicate in the Disclosure Statement his participation at the provisional measures stage of the present proceeding. Mr Kateka was a member of ITLOS when the latter rendered the Provisional Measures Order on 25 May 2019.[27]

While the Russian Federation is aware that such happenstance has apparently become common in Annex VII arbitrations, the repeated appearance of the same individuals as neutrals in more than one adjudicating body under Article 287 of UNCLOS in the same case (even if in different phases of the same proceedings) may still have an impact on their perception and attitude towards the case.

The Russian Federation recalls, in this context, the Statute of the International Court of Justice:

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[24] Global Arbitration Review, *US arbitrator disqualified from Russia case over LinkedIn post* (21 August 2024), available at: https://globalarbitrationreview.com/article/us-arbitrator-disqualified-russia-case-over-linkedin-post.

[25] *Sun Yang v. World Anti-Doping Agency and International Swimming Federation*, Case 4A_318/2020, Judgment of the First Civil Law Court, 22 December 2020.

[26] *Ibid*., ¶¶7.9-8.

[27] *Case Concerning the Detention of Three Ukrainian Naval Vessels (Ukraine v. the Russian Federation)*, Provisional Measures, Order of 25 May 2019.

> No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.[28] [Emphasis added]

The Burgh House Principles on the Independence of the International Judiciary likewise reiterate this principle:

> Judges shall not serve in a case in which they have previously served as agent, counsel, adviser, advocate, expert or in any other capacity for one of the parties, or as a member of a national or international court or other dispute settlement body which has considered the subject matter of the dispute.[29] [Emphasis added]

By virtue of his prior involvement in this very case as a judge, Mr Kateka has had an opportunity to form a view on the subject-matter of the present Arbitration, possibly impacting his appreciation of the legal arguments and factual circumstances under review.

Moreover, Mr Kateka did not append to the ITLOS Order indicating provisional measures any opinion setting out his own appreciation of the underlying legal and factual issues. Mr. Kateka thus supported that the ITLOS' findings that:

- '*prima facie* the Annex VII arbitral tribunal would have jurisdiction over the dispute submitted to it';[30]
- 'the rights claimed by Ukraine on the basis of articles 32, 58, 95 and 96 of the Convention are plausible under the circumstances';[31]
- 'the actions taken by the Russian Federation could irreparably prejudice the rights claimed by Ukraine to the immunity of its naval vessels and their servicemen if the Annex VII arbitral tribunal adjudges those rights to belong to Ukraine'.[32]

Given the relevance of the issues considered by ITLOS at the Provisional Measures' stage of the present arbitration, the Russian Federation is concerned that Mr Kateka's

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[28] Article 17(2) of the Statute of the International Court of Justice.

[29] The Burgh House Principles on the Independence of the International Judiciary, ¶9.1, available at: https://docs.pca-cpa.org/2020/04/ef1f0fb6-burgh-house-principles.pdf.

[30] *Case Concerning the Detention of Three Ukrainian Naval Vessels (Ukraine v. the Russian Federation)*, Provisional Measures, Order of 25 May 2019, ¶90.

[31] *Ibid*., ¶97.

[32] *Ibid*., ¶111.

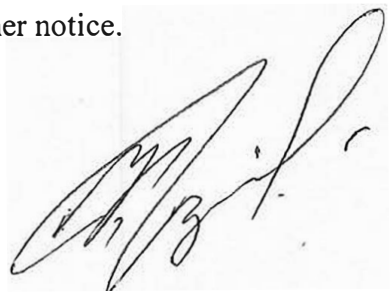
exposure to the Parties' arguments in the earlier proceedings, as well as his unequivocal support of the Order regarding multiple issues at the heart of the proceedings, might unduly influence his decision-making on the merits of the case.

It is well known that, in general, judges and arbitrators cannot be expected to always 'maintain a "Chinese wall" in [their] own mind' and repeatedly approach the same legal questions with an open mind.[33] Accordingly, Mr Kateka's prior involvement in the case at the provisional measures stage and the view he endorsed in that instance serve to escalate existing reasonable concerns about his impartiality.

The Russian Federation is therefore compelled, without prejudice to its overarching principled position on the illegality of Mr Kateka's appointment in the first place, to bring these considerations to the attention of the incumbent three members of the Arbitral Tribunal and Mr Kateka, and respectfully invites Mr Kateka to consider withdrawing from the case.

For the sake of clarity, I must stress that this letter is without prejudice to the Russian Federation's position, as expressed in its notification of 9 August 2024, concerning the suspension of its formal participation in this arbitration, until further notice.

Sincerely,



Gennady KUZMIN

Agent of the Russian Federation

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[33] *Caratube International Oil Company LLP and Devincci Salah Hourani v. Republic of Kazakhstan*, ICSID Case No. ARB/13/13, Decision on the Proposal for Disqualification of Mr. Bruno Boesch, 20 March 2014, ¶¶75, 90: 'The Unchallenged Arbitrators agree with the Claimants that the similarity in cases, in particular in the facts underlying the *Ruby Roz* case and the present arbitration, is an important consideration in the assessment of Mr. Boesch's perceived impartiality in the present arbitration ... [A] problem can arise where an arbitrator has obtained documents or information in one arbitration that are relevant to the dispute to be determined in another arbitration. In this situation, the arbitrator "cannot reasonably be asked to maintain a 'Chinese wall' in his own mind: his understanding of the situation may well be affected by information acquired in the other arbitration" ... [A] reasonable and informed third party would find it highly likely that, due to his serving as arbitrator in the *Ruby Roz* case and his exposure to the facts and legal arguments in that case, Mr. Boesch's objectivity and open-mindedness with regard to the facts and issues to be decided in the present arbitration are tainted.'