

In the matter of an arbitration under the UNCITRAL Arbitration Rules

between

OOO MANOLIUM-PROCESSING

Claimant

v.

THE REPUBLIC OF BELARUS

Respondent

**DECISION ON CLAIMANT'S
INTERIM MEASURES
REQUEST**


ARBITRAL TRIBUNAL

Juan Fernández-Armesto (Chairman)
Stanimir Alexandrov
Brigitte Stern

ADMINISTRATIVE SECRETARY

Bianca McDonnell

WHEREAS

1. This arbitration arises between OOO MANOLIUM-PROCESSING [**"Manolium"** or **"Claimant"**] and the REPUBLIC OF BELARUS [**"Belarus"** or **"Respondent"**] under the Treaty on the Eurasian Economic Union dated 29 May 2014 [the **"EEU Treaty"**]. Claimant and Respondent shall be jointly referred to as the **"Parties"**.
2. On 11 November 2017, Claimant sent its Notice of Arbitration. On 15 December 2017, Respondent sent its Response to the Notice of Arbitration.
3. On 10 May 2018, Claimant filed its Statement of Claim.
4. On 11 June 2018, Respondent filed its Application for Bifurcation on Quantum.
5. On 1 August 2018, the Arbitral Tribunal issued its Decision on Bifurcation deciding not to bifurcate the quantum phase of the proceedings.
6. On 28 July 2018, Claimant submitted its Interim Measures Request [**"Claimant's Request"**] which forms the basis of this Decision, along with CWS-1 and CWS-2 of Mr. Andrey Dolgov.
7. The Tribunal provided the Respondent until 21 September 2018 to respond to Claimant's Request¹. In the meantime, the Tribunal directed the Parties to refrain from adopting any measures which may result in the aggravation of the dispute or altering the *status quo*².
8. On 12 September 2018, Respondent informed the Arbitral Tribunal that the

9. On 21 September 2018, Respondent submitted its Response to Claimant's Interim Measures Request [**"Respondent's Response"** or **"Response"**] and RWS-1, a witness statement of Mr. Vikentiy Koroban.
10. On 28 September 2018, the Tribunal granted Claimant's request to respond to Respondent's Response and RWS-1, which it alleged contains incorrect and misleading information⁴.

¹ Communications A 9 of 30 July 2018, RS-9 of 31 July 2018, A 10 of 1 August 2018, and A 11 of 3 August 2018.

² Communication A 10 of 1 August 2018, para. 3; Communication A 11 of 3 August 2018, para. 4.

³ Communication RS-11, p. 2.

⁴ Communication C-25 of 25 September 2018; Communication A 13 of 28 September 2018.

11. On 5 October 2018, Claimant submitted its Comments to Respondent's Response to the Claimant's Interim Measures Request [**"Claimant's Comments"**] and marshalled CWS-3 of Mr. Leonid Vladimirovich Torot'ko and CWS-4 of Mr. Andrey Dolgov⁵.
12. On 12 October 2018, Respondent submitted its Observations on Comments to Response to Interim Measures Request [**"Respondent's Observations"**].
13. After considering the Parties' submissions, the Tribunal now issues the following Decision.

THE DECISION

14. This Decision concerns Claimant's request that the Tribunal issue interim measures concerning investigations in Belarus, against Claimant and its affiliate Manolium-Engineering, and their current and former officials, which Claimant alleges have the potential of aggravating the dispute and violating the integrity of the arbitral proceedings.
15. Claimant requests the Arbitral Tribunal to issue an order directing Respondent to⁶:
 - Abstain from initiating criminal proceedings and/or suspend any current criminal proceedings against the former and current officials of Claimant and Manolium-Engineering until the completion of the arbitration [**"Order Against Criminal Proceedings"**];
 - Refrain from contacting the shareholders, officials and employees of Claimant and Manolium-Engineering, without the consent from Claimant and prior authorization of the Tribunal [**"Order to Restrict Communication"**];
 - Avoid any other actions that could further aggravate the dispute and violate the integrity of the arbitral proceedings [**"Non-Aggravation Order"**].
16. Respondent, on the other hand, asks that Claimant's Request be dismissed in its entirety, and reserves the right to recover costs incurred in connection with the Request on an indemnity basis⁷.
17. The Tribunal will provide the factual background to the Orders (1.), then address the Parties' positions (2. and 3.) and finally take a decision (4.).

1. FACTUAL BACKGROUND

18. There are three main series of events underlying Claimant's requested Orders: the Tax Evasion Investigation (A.), the Insolvency Proceeding (B.), and the interview of Mr. Koroban (C.).

⁵ Communication C-26.

⁶ Claimant's Request, para. 59; Claimant's Comments, para. 55.

⁷ Respondent's Response, paras. 97-98; Respondent's Observations, paras. 45-46.

A. Tax Evasion Investigation

19. In March 2017, eight months prior to Claimant sending the Notice of Arbitration, the Inspectorate of the Ministry of Taxes and Levies of the Republic of Belarus for the Minsk Region conducted a tax audit of Manolium-Engineering⁸. The audit was published on March 24, 2017 and found that Manolium-Engineering owed 11,826,511.43 Belarusian rubles in unpaid taxes and 2,698,691.64 in fines⁹.
20. On 15 June 2017, the tax inspector – in accordance with the requirement under Belarusian law¹⁰ – notified the Department for Financial Investigations of the Belarus State Control Committee [**“Department for Financial Investigations”**] about Manolium-Engineering's non-payment of tax, identifying the names and positions of the individuals whose actions or failure to act may have caused the non-payment of tax¹¹. The letter identified Manolium-Engineering's Directors, Mr. Andrey Dolgov and Mr. Aram Ekavyan, the Director of Manolium-Processing (which is the owner of Manolium-Engineering), who are both residents of Russia¹².
21. Upon receipt of the information from the Tax Inspector, the Department for Financial Investigations initiated pre-investigation inquiries to determine whether sufficient evidence exists to initiate criminal proceedings against the managers or other officials of Manolium-Engineering for tax evasion [**“Tax Evasion Investigation”**]¹³.

a. [REDACTED]

22. [REDACTED]

⁸ Doc. C-186.

⁹ Doc. C-186, p. 8.

¹⁰ Respondent's Response, fn. 5.

¹¹ Doc. R-1.

¹² Doc. R-1, p. 2.

¹³ Respondent's Response, para. 16, citing the Criminal Procedure Code of the Republic of Belarus, Articles 166(3) and 167(1).

¹⁴ Doc. R-2.

¹⁵ Doc. R-2, p. 2.

[REDACTED]

[REDACTED]

[REDACTED]

23. [REDACTED]

b. [REDACTED]

24. [REDACTED]

[REDACTED]

25. [REDACTED]

26. [REDACTED]

¹⁶ Doc. R-4.
¹⁷ Doc. R-3, p. 1.
¹⁸ Doc. R-5, p. 2.
¹⁹ Doc. R-5, p. 2.
²⁰ Doc. R-5, p. 2.
²¹ Doc. R-5, p. 2.
²² Doc. C-199; Doc. C-200 and WS of A. Dolgov, CWS-2, para. 3.

c. [REDACTED]

27. [REDACTED]

28. [REDACTED]

[REDACTED]

[REDACTED]

B. Insolvency Proceeding

29. Claimant and Mr. Dolgov jointly own Belarusian Foreign Enterprise Manolium-Processing [**"BMP"**], a separate legal entity for which Mr. Dolgov was the general director between 2002 and June 2016²⁵.
30. In November 2016, a voluntary liquidation procedure was commenced for BMP by Claimant, Mr Dolgov, and other shareholders²⁶. However, on 3 March 2017, a private third-party creditor submitted an application to the Economic Court of the City of Minsk [the **"Court"**] seeking to commence insolvency proceedings in relation to BMP²⁷, putting the voluntary liquidation procedure on hold.
31. On 14 April 2017, the Court granted the creditor's application, ordering the liquidation procedure to be replaced by insolvency proceedings, and appointed an insolvency administrator [**"Insolvency Proceeding"**]²⁸.
32. On 19 February 2018, an expert was appointed by the Court to examine the circumstances of BMP's insolvency²⁹, in order to assist the administrator in ascertaining whether insolvency was deliberately caused by the officers of the entity, a determination required under Belarusian insolvency law³⁰. In July 2018, the expert report was submitted to the Court and a hearing was held on 7 August 2018³¹. The expert found that the management bodies of BMP had knowingly and deliberately entered into transactions on disadvantageous terms causing detriment

²³ [REDACTED]
²⁴ [REDACTED]

²⁵ Respondent's Observations, paras. 8-9.

²⁶ Respondent's Observations, para. 10.

²⁷ Respondent's Observations, para. 10.

²⁸ Respondent's Observations, para. 10.

²⁹ Doc. R-10, p. 1.

³⁰ Respondent's Observations, para. 11, citing Insolvency Law of the Republic of Belarus, Art. 77(1).

³¹ Doc. R-10, p. 1.

to the company's solvency and economic position³². The expert appeared to have found evidence that the insolvency was intentional, obstructing the ability for creditors to recover losses³³.

33. During the hearing the Court directed the insolvency administrator to³⁴:

“... send the case files to the Minsk Prosecutor's Office to arrange for the consideration of whether there are indications of false insolvency, deliberate insolvency, concealment of insolvency or obstruction of recovery of the creditors' losses, subject to informing the court of the decision taken; based on the results of the liquidation procedure, submit to the economic court by 21 December 2018 a report complying with the requirements of Article 149 of the Law of the Republic of Belarus “On Economic Insolvency (Bankruptcy)”.

34. On 30 August 2018 the Administrator sent materials from the insolvency case file to the Minsk Prosecutor's Office³⁵. On 7 September 2018 the Minsk Prosecutor's Office sent the files to the Department of Financial Investigations, which on 11 September 2018 transmitted the files to the relevant territorial office to commence the investigation³⁶.

35. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³² Doc. R-10, p. 2.

³³ Doc. R-10, p. 2.

³⁴ Doc. R-10, p. 3.


³⁵ Respondent's Observations, para. 15.

³⁶ Respondent's Observations, paras. 15-16.

³⁷ Claimant's Comments, para. 11, citing Third WS of A. Dolgov, CWS-4, paras. 19-20.

³⁸ Claimant's Comments, para. 12, citing Third WS of A. Dolgov, CWS-4, para. 18.

³⁹ Claimant's Comments, para. 13, citing Third WS of A. Dolgov, CWS-4, paras. 19-20.

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C. Mr. Koroban's Interview

36. Mr. Vikentiy Koroban is the former Deputy Director of Manolium-Engineering. He provided RWS-1 which was marshalled by Belarus with its Response.
37. In July 2018, Mr. Koroban was interviewed at the Minsk City Executive Committee ["MCEC"] by representatives of Respondent's counsel, as part of the Respondent's preparation of its Statement of Defence in the present arbitration⁴².
38. Subsequently, Mr. Koroban had a telephone conversation with Mr. Leonid Torot'ko, who he used to work with at Manolium-Engineering, and discussed the meeting at the MCEC⁴³. The Parties and the witnesses disagree on the content of that conversation: in particular, how the interview at the MCEC came about (a.), and whether Mr. Koroban's actions indicate a fearfulness of repercussions within Belarus (b.).

a. The interview at the MCEC

(i) Mr. Torot'ko's version of events

39. Mr. Torot'ko is a former colonel in the Belarusian Ministry of Internal Affairs and has previously worked at Manolium-Engineering with Mr. Koroban; he is currently employed by Centrobeton, the director of which is Mr. Dolgov's son⁴⁴.
40. Mr. Koroban told him that he was "summoned" to the MCEC and questioned about the circumstances of Claimant's investment project in Belarus, such as the legality of Manolium-Engineering's operations, the sufficiency of funds for investment under the Investment Contract, and whether Mr. Dolgov bribed Belarusian government officials⁴⁵.

(ii) Mr. Dolgov's recount

41. Mr. Dolgov states that he was informed by colleagues of Manolium-Engineering that Mr. Koroban was summoned to the MCEC alongside representatives of a foreign law firm and asked questions related to Claimant's investment in Belarus⁴⁶.

⁴⁰ It is not clear from the submissions or exhibits the relationship between BMP and Centrobeton.

⁴¹ Claimant's Comments, para. 13, citing Third WS of A. Dolgov, CWS-4, paras. 21-22.

⁴² WS V. Koroban, RWS-1, para. 8.

⁴³ WS V. Koroban, RWS-1, para. 9; WS L. Torot'ko, CWS-3, para. 15.

⁴⁴ WS of L. Torot'ko, CWS-3, paras. 10, 14.

⁴⁵ WS of L. Torot'ko, CWS-3, paras. 15, 18.

⁴⁶ WS of A. Dolgov, CWS-2, para. 3.

42. However, when he called Mr. Koroban in the presence of Claimant's Counsel, and asked that he tell him about the meeting at the MCEC, Mr. Koroban⁴⁷:

"... informed me that actually, nobody had "*summoned*" him and that he had come to the MCEC for his own business and accidentally witnessed the discussion of the arbitration proceedings by the MCEC's representatives.

In addition, [he] stated that no representatives of an international law firm together with an interpreter were present at the MCEC and that nobody asked him about his work at Manolium-Engineering, the project related to the Investment Contract in Minsk and whether I had offered any bribes to representatives of the governmental authorities of the Republic of Belarus".

43. Mr. Dolgov's reaction was the following⁴⁸:

"I was absolutely shocked by the fact that the man with whom I had worked for such a long time and who had been my deputy, offered me, quite unexpectedly, the version of events completely different from the version that he had offered to L. Torot'ko ..."

44. On the same day, 20 July 2018, Mr. Dolgov – quite upset by Mr. Koroban's recollection of the meeting – sent Mr. Koroban the following text message, in which he shows his disbelief⁴⁹:

"Vikentiy Vaclavovich! Telling lies at your age is not a nice thing to do!
This is what I think! I apologize!"

(iii) Mr. Koroban's version of the MCEC interview

45. Mr. Koroban says he attended the MCEC voluntarily and without coercion, and discussed the circumstances of this arbitration⁵⁰. He states that during a conversation with Mr. Torot'ko, he mentioned that he⁵¹:

"... had been into the office of MCEC and overheard MCEC staff discussing the dispute relating to the Claimant. Contrary to what is suggested in the WS, I did not tell Mr Torotko or anyone else about meetings with foreign lawyers, let alone meetings in the presence of an interpreter. Nor did I say (nor could I have said) to Mr Torotko that I had been asked whether Mr Dolgov had bribed representatives of the Belarus state authorities".

46. Further, Mr. Koroban states that when Mr. Dolgov asked him about the meeting at the MCEC, he answered that he⁵²:

"...had not gone there, because I did not wish to discuss this topic with him".

⁴⁷ WS of A. Dolgov, CWS-4, paras. 10-12.

⁴⁸ WS of A. Dolgov, CWS-4, para. 13.

⁴⁹ WS of A. Dolgov, CWS-4, para. 13.

⁵⁰ WS of V. Koroban, RWS-1, para. 8.

⁵¹ WS of V. Koroban, RWS-1, para. 10.

⁵² WS of V. Koroban, RWS-1, para. 13.

47. In addition, Mr. Koroban says that Mr. Torot'ko said⁵³:

"... it was a mistake for [Mr. Koroban] to have gone to MCEC, hinting that now Mr Dolgov and [Mr. Koroban] would face a threat of criminal prosecution. Mr Torotko said he would call Mr Dolgov about this".

48. Regarding his safety, Mr. Koroban says⁵⁴:

"Mr Dolgov asserts that I am concerned about my safety in the Republic of Belarus. This is not true. I am not worried for my safety. The only one who has ever told me about potential criminal prosecution was Mr Torotko, as I describe in paragraph 11 above".

b. Alleged coercion of Mr. Koroban

49. Mr. Dolgov asserts that the only explanation for Mr. Koroban's alleged contradictory behaviour is⁵⁵:

"...that V. Koroban worries about his own safety in the Republic of Belarus and, for this reason, changes his testimony all the time".

50. Mr. Torot'ko shares the same feeling⁵⁶:

"I believe that such a behavior is very strange. It is quite possible that V. Koroban is afraid of something and, hence, does not know how to behave: at first, he called me and told me about the circumstances of his meeting at the MCEC, and then started to deny them. However, I remember everything he told me and everything I stated above very well".

51. In addition, Mr. Torot'ko denies hinting the possibility of criminal prosecution to Mr. Koroban, as alleged by Mr. Koroban⁵⁷:

"I don't understand what V. Koroban had in mind when he said that I had hinted to him a threat of criminal prosecution. I haven't worked with government authorities for a long time and, therefore, could not have threatened him with a criminal prosecution even in theory.

We did discuss the possibility of a criminal liability but only in the context of the fact that Belarus sometimes initiates criminal cases against businessmen in order to exert pressure on them and, so long as V. Koroban was summoned to the MCEC, we may well expect that criminal case will be initiated against management of Manolium-Engineering".

2. CLAIMANT'S POSITION

52. Claimant avers that the requested interim measures fulfil the requirements under the UNCITRAL Arbitration Rules of 2013 ["**UNCITRAL Rules**"], and are

⁵³ WS of V. Koroban, RWS-1, para. 11.

⁵⁴ WS of V. Koroban, RWS-1, para. 15.

⁵⁵ WS of A. Dolgov, CWS-4, para. 14.

⁵⁶ WS of L. Torot'ko, CWS-3, para. 26.

⁵⁷ WS of L. Torot'ko, CWS-3, paras. 22-23.

necessary to avoid harm to Claimant which could not be adequately repaired with an award of damages⁵⁸.

53. Claimant avers that the following rights are under threat⁵⁹:
- Right to the procedural integrity of the overall proceedings;
 - Right to the non-aggravation of the dispute; and
 - The equality of the Parties in the proceeding.
54. Claimant avers that Respondent is attempting to take justice into its own hands by [REDACTED] key individuals involved in the investment project, about issues directly related to this dispute⁶⁰. Claimant states that Respondent's [REDACTED] is intimidating Claimant's witnesses and former employees, putting the procedural integrity of this arbitration at threat⁶¹.
55. Respondent is circumventing the arbitral process by using its law enforcement agencies and domestic criminal procedures to search for harmful information about Claimant, which it intends to use as evidence in this arbitration⁶².
56. This way of behaving is contrary to Respondent's obligations in this arbitration, as acknowledged in *Quiborax v. Bolivia*, where the tribunal found that the potential criminal proceedings against witnesses violated the integrity of the arbitral proceedings⁶³.
57. Respondent cannot be permitted to gain an unfair advantage in the arbitration by using its criminal powers [REDACTED]⁶⁴.
58. Claimant supports its position with the following arguments: that [REDACTED] was likely motivated by an improper purpose (A.), that Mr. Koroban was coerced to testify for Respondent (B.), and that the Tribunal should look at Belarus' behaviour in past cases to establish a *modus operandi* (C.).
- A. Improper [REDACTED] of key witnesses**
59. Claimant avers that the Belarusian authorities are considering initiating a criminal case in order to collect evidence outside of this arbitration and/or to pressure Claimant and its witnesses⁶⁵.

⁵⁸ Claimant's Request, para. 30.

⁵⁹ Claimant's Request, para. 31.

⁶⁰ Claimant's Request, paras. 34-35.

⁶¹ Claimant's Request, para. 32.

⁶² Claimant's Request, para. 37.

⁶³ Claimant's Request, para. 36, citing *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2. Decision on Provisional Measures of 26 February 2010, paras. 141-148 (Ex. CL-71).

⁶⁴ Claimant's Comments, paras. 16-17.

⁶⁵ Claimant's Request, para. 13.

60. [REDACTED]

[REDACTED]

[REDACTED]

61. Claimant states that even after its Interim Measures Request, Respondent has continued to use its police powers to intimidate witnesses⁷⁰.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

62. Claimant avers that this is strong evidence that Respondent is attempting to contact and intimidate Mr. Dolgov, by intimidating his family members, present and former colleagues and other affiliated persons⁷⁶.

⁶⁶ Claimant's Request, para. 8.

⁶⁷ WS of A. Dolgov, CWS-2, para. 5.

⁶⁸ Claimant's Request, para. 12.

⁶⁹ Claimant's Request, para. 10.

⁷⁰ Claimant's Comments, para. 10.

⁷¹ Claimant's Comments, para. 10.

⁷² Claimant's Comments, para. 11, citing Third WS of A. Dolgov, CWS-4, paras. 19-20.

⁷³ Claimant's Comments, para. 12, citing Third WS of A. Dolgov, CWS-4, para. 18.

⁷⁴ Claimant's Comments, para. 13, citing Third WS of A. Dolgov, CWS-4, paras. 19-20.

⁷⁵ Claimant's Comments, para. 13, citing Third WS of A. Dolgov, CWS-4, paras. 21-22.

⁷⁶ Claimant's Comments, para. 15.

63. Claimant additionally questions the motivation for Respondent's demand that Mr. Dolgov include his address in his witness statement, averring that this indicates that the Respondent is preparing some action against Mr. Dolgov outside of this arbitration⁷⁷.

B. Coercion of Mr. Koroban

64. Claimant points to the questioning of Mr. Koroban, where he was allegedly asked if Mr. Dolgov bribed government officials, to suggest that Respondent is using its powers to collect evidence from Claimant's former employees outside of the arbitral process⁷⁸.

65. According to Claimant, the facts of the meeting at the MCEC and Mr. Koroban's contradictory behaviour demonstrate witness coercion and an attempt to pressure and intimidate Mr. Koroban into silence⁷⁹, and that Mr. Koroban's cooperation was done out of fear for his well-being; demonstrating the need for granting Claimant's Request⁸⁰.

66. Claimant additionally points to the following three inconsistent statements in Mr. Koroban's witness statement:

67. First, Mr. Koroban states that he attended the MCEC voluntarily⁸¹:

"I voluntarily and without coercion came to the Minsk City Executive Committee ("MCEC") and discussed the circumstances relating to this arbitration".

68. Second, two paragraphs later he asserts that he was in the MCEC and overheard the MCEC staff discussing the arbitration⁸²:

"I mentioned in the conversation to Mr Torotko that I had been into the office of MCEC and overheard MCEC staff discussing the dispute relating to the Claimant".

69. Third, when discussing the matter with Mr. Dolgov over the phone he denied that the meeting at the MCEC had occurred⁸³:

"Mr Dolgov also was interested if I had been to MCEC in connection with the arbitration and asked what I had discussed there. I said I had not gone there, because I did not wish to discuss this topic with him".

70. Claimant avers that Mr. Koroban's contradictory testimony should not be believed⁸⁴, and the evidence indicates that he was summoned to the MCEC to

⁷⁷ Claimant's Request, para. 19.

⁷⁸ Claimant's Request, para. 17.

⁷⁹ Claimant's Request, para. 18.

⁸⁰ Claimant's Comments, para. 35. Claimant's Comments, para. 51. WS of L. Torot'ko, paras. 21-23, 26.

⁸¹ WS of V. Koroban, RWS-1, para. 8.

⁸² WS of V. Koroban, RWS-1, para. 10.

⁸³ WS of V. Koroban, RWS-1, para. 13.

⁸⁴ Claimant's Comments, para. 22.

discuss the arbitration with Respondent's representatives and counsel⁸⁵. If anything, Mr. Koroban's witness statement shows that Respondent's conduct has already had an adverse effect on him, who as a permanent resident of Belarus is susceptible to pressure from the Belarusian authorities⁸⁶.

C. Belarus' repeat *modus operandi*

71. Claimant points to various instances of Belarusian authorities initiating "baseless" criminal cases and jailing key witnesses in commercial disputes, to allege that the actions towards Claimant and its affiliate companies and individuals, are indicative of Belarus' *modus operandi* when engaged in commercial disputes with companies⁸⁷.
72. For example, just this year Respondent arrested Michael Furman, an official from a Russian company Grand Express, after it brought an ICSID claim against Belarus (*Grand Express v. Belarus*)⁸⁸. Mr. Furman was arrested in Athens International Airport at the request of Belarusian law enforcement authorities. However, the Greek judiciary overturned the arrest warrant, finding that the criminal proceedings brought by Belarus were based upon artificial grounds, and ordered Mr. Furman's release⁸⁹.
73. Further in 2013, Vladislav Baumgertner the CEO of a Russian company Uralkali, was invited to Belarus by the Prime Minister to discuss a commercial dispute arising out of a joint venture with a Belarusian state-owned entity⁹⁰.
74. After the meeting with the Prime Minister of Belarus, Mr. Baumgertner was at the airport of Minsk when he was handcuffed by Belarusian law enforcement authorities and taken to detention facilities, where he spent one month, before his pre-trial restriction was changed to home detention under 24-hour supervision of the Committee of the State Security of the Republic of Belarus⁹¹. He was charged with abuse of power and seeking gain at the expense of the Republic of Belarus⁹².
75. After a three month delay and several rounds of negotiations, Belarus eventually agreed to extradite Mr. Baumgertner (after the initiation of fictitious criminal charges in Russia) on the condition that the loss of approximately USD 1.5 - 2 billion which Belarus had allegedly incurred, be compensated, and after Uralkali's leading shareholder Mr. Suleiman Kerimov agreed to sell his shares⁹³.
76. Claimant additionally notes that the European Parliament recently condemned Belarus' "repressive and undemocratic policy towards journalists, lawyers,

⁸⁵ Claimant's Comments, para. 33.

⁸⁶ Claimant's Request, para. 38; Claimant's Comments, paras. 20-22.

⁸⁷ Claimant's Comments, paras. 36-49.

⁸⁸ Claimant's Comments paras. 47-49.

⁸⁹ Claimant's Comments para. 48.

⁹⁰ Claimant's Comments paras. 37-40.

⁹¹ Claimant's Comments paras. 41-44.

⁹² Claimant's Comments para. 42.

⁹³ Claimant's Comments para. 45.

political activists and civil society actors”⁹⁴. Claimant avers that Respondent's pressure of Mr. Koroban and other witnesses and representatives should not come as a surprise, in light of Belarus' long track record of abuse⁹⁵.

3. RESPONDENT'S POSITION

77. According to Respondent, Claimant's Order Against Criminal Proceedings is moot⁹⁶ because [REDACTED]

78. In any event, Respondent avers that Claimant has failed to meet the requirements set out in the UNCITRAL Rules for the granting of interim measures (**A.** – **C.**), and Claimant has brought its Request as an abuse of process (**D.**):

A. No prima facie case

79. Claimant has not satisfied the burden of establishing that the Tribunal has *prima facie* jurisdiction or a *prima facie* case on the merits⁹⁹.

B. No current or imminent harm likely to occur

80. Respondent avers that Claimant's Request fails to meet the applicable legal test under Art. 26 of the UNCITRAL Rules¹⁰⁰. Respondent argues that Claimant has failed to provide the Tribunal with the accurate standard for granting interim measures under Art. 26 of the applicable UNCITRAL Rules, relying instead on less onerous tests adopted by tribunals on the basis of an older version of the rules¹⁰¹. Respondent states that regardless of which standard is applied, Claimant's request for interim measures still fails¹⁰².

81. Claimant has not established that the Order Against Criminal Proceedings is necessary to prevent “current or imminent” harm that is “likely” to occur under Article 26(2)(b) of the UNCITRAL Rules¹⁰³(**a.**). And Claimant has failed to provide any concrete evidence to support its position that the pre-investigation inquiries were improper (**b.**), especially considering that a measure such as the

⁹⁴ Claimant's Comments para. 49, citing Ex. C-213.

⁹⁵ Claimant's Comments para. 50.

⁹⁶ Respondent's Response, para. 76.

⁹⁷ [REDACTED]

⁹⁸ Respondent's Response, para. 6.

⁹⁹ Respondent's Response, paras. 61-63.

¹⁰⁰ Respondent's Response, para. 3, 90; Respondent's Observations, para. 4.

¹⁰¹ Respondent's Response, para. 46; Respondent's Observations, para. 4.

¹⁰² Respondent's Response, para. 46.

¹⁰³ Respondent's Response, para. 77.

one requested by Claimant, should only be granted in exceptional circumstances and where absolutely necessary¹⁰⁴.

a. No urgency

82. Respondent states that the requirement of urgency fails, as the pre-investigation inquiries were commenced [REDACTED], around [REDACTED] months prior to the commencement of this arbitration¹⁰⁵. Claimant fails to substantiate how [REDACTED] or any of the other factual circumstances on which it relies, have changed the *status quo ante* existing at the time the arbitration was commenced. This supports the Respondent's position that the Order Against Criminal Proceedings is not urgent¹⁰⁶.

b. No harm

83. Belarus argues that all of Claimant's evidence is based only on hearsay and opinion evidence¹⁰⁷; and thus, it fails to satisfy the high standard of proof required to establish the occurrence of intimidation¹⁰⁸, or satisfied the high burden of proof under Art. 26(3)(a) of the UNCITRAL Rules¹⁰⁹.

84. Particularly, as regards to:

85. (i) [REDACTED] during the Tax Evasion Investigation does not pose any risk to Claimant's rights in the arbitration, or inhibit Mr. Dolgov's or Mr. Ekavyan's ability to effectively participate in the arbitration¹¹⁰.

86. [REDACTED] Respondent's investigations were conducted in good faith and Claimant's request should be dismissed¹¹⁴.

87. Further, Respondent's request for Mr. Dolgov's address cannot possibly be regarded as proof of an attempt by Respondent to plan action against Mr. Dolgov

¹⁰⁴ Respondent's Response, para. 87, citing *Teimver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. The Argentine Republic*, ICSID Case No. ARB/09/1, Decision on Provisional Measures, 8 April 2016, Ex. RL-26, para. 190; *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Order on Provisional Measures, 3 March 2016, Ex. CL-77, para. 3.16, Ex. CL-77.

¹⁰⁵ Respondent's Response, para. 55.

¹⁰⁶ Respondent's Response, para. 84.

¹⁰⁷ Respondent's Observations, para. 3.

¹⁰⁸ Respondent's Response, para. 80.

¹⁰⁹ Respondent's Response, para. 88.

¹¹⁰ Respondent's Response, paras. 56, 83.

¹¹¹ Respondent's Response, paras. 23, 55.

¹¹² Respondent's Response, para. 79.

¹¹³ Respondent's Response, para. 23.

¹¹⁴ Respondent's Response, para. 79.

outside of the arbitral process; to the contrary, Claimant's suggestion is ludicrous for the following reasons¹¹⁵:

- First, it was Claimant's suggestion to include in Procedural Order No. 1 para. 35, the requirement that a witness must include its address in its witness statement¹¹⁶.
 - Second, Respondent already had Mr. Dolgov's address, [REDACTED]
88. (ii) [REDACTED] during the Insolvency Proceeding was carried out in good faith, as a result of a proceeding commenced by a private third-party company, and pursuant to the legitimate directions of the Court¹¹⁸. Furthermore, the [REDACTED] concerned routine matters irrelevant to this dispute, since BMP is a separate legal entity engaged in a variety of activities primarily consisting of leasing property, which are unrelated to Manolium-Engineering and to this arbitration, and [REDACTED] dealt with the reasons for BMP's insolvency¹¹⁹.
89. According to Respondent, the fact that [REDACTED] concerned Mr. Dolgov is logical considering that he was the General Director of BMP during the time in which the conduct occurred¹²⁰. Claimant's assertion that [REDACTED] indicate a forthcoming attempt by Respondent to improperly contact Mr. Dolgov, are ungrounded and speculative¹²¹.
90. [REDACTED] not because Respondent was attempting to intimidate Claimant, but because they played a key role in the events leading to BMP's insolvency¹²².
91. Respondent alleges that Claimant falls manifestly short of fulfilling the high burden of proving an attempt to intimidate Mr. Dolgov or Claimant by the [REDACTED]
92. (iii) The interview with Mr. Koroban. Respondent argues that Claimant has misrepresented the nature of Mr. Koroban's meeting with the MCEC and his

¹¹⁵ Respondent's Response, para. 43.

¹¹⁶ Respondent's Response, para. 42.

¹¹⁷ Respondent's Response, para. 43.

¹¹⁸ Respondent's Observations, paras. 5, 10, 18.

¹¹⁹ Respondent's Observations, para. 6.

¹²⁰ Respondent's Observations, para. 21.

¹²¹ Respondent's Observations, para. 21.

¹²² Respondent's Observations, para. 22. Ms. [REDACTED] was the chief accountant of BMP; Ms. [REDACTED] was a party to lease agreements with BMP under which she leased premises to BMP at an alleged inflated price; Mr. [REDACTED] (Mr. Dolgov's cousin) was the CEO of Centrobeton, the entity which received interest-free loans from BMP; and the liquidator of Oktan-AZS-Service, a company which also received interest-free loans from BMP.

¹²³ Respondent's Observations, paras. 26-27, citing *Churchill Mining and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Procedural Order No. 14, 22 December 2014, paragraph 72, Ex. RL-25: "[a]n allegation that the status quo has been altered or that the dispute has been aggravated needs to be buttressed by concrete instances of intimidation or harassment".

subsequent phone conversation with Mr. Dolgov, in order to paint the Respondent in a bad light¹²⁴, and has failed to establish any basis on which the Order to Restrict Communication should be granted¹²⁵.

93. Claimant's conclusion that Mr. Koroban's accounts are contradictory is based on the assumption that Mr. Koroban was under an obligation to report fully and accurately to Mr. Dolgov and Mr. Torot'ko¹²⁶. The fact that Mr. Koroban chose not to, does not justify Claimant's far-reaching conclusion that Mr. Koroban is acting "out of fear for his well-being" or calls "into serious question the veracity of his testimony"¹²⁷.
94. In addition, Mr. Koroban has confirmed that he came to the MCEC voluntarily and without coercion and that he is not worried about his safety¹²⁸. Claimant's failure to support its accusations about the pressure on Mr. Koroban is manifest¹²⁹.
95. In any case, Mr. Koroban is not a shareholder, official or employee of Claimant, and has not been employed by Claimant for four years, thus not correlating with Claimant's requested Order to Restrict Communications¹³⁰.
96. (iv) Claimant's reference to unrelated domestic criminal proceedings is an attempt to fill the gaping hole in its non-existent evidence¹³¹. These speculations are of no relevance to the arbitration, especially since [REDACTED]

C. Orders are disproportionate

97. In regard to the requirement of proportionality under the UNCITRAL Rules, Respondent states that Claimant fails to apply the correct test¹³³.
98. But even under the less burdensome proportionality test cited by Claimant, the "balance of inconvenience" would still fall strongly in favour of not granting the Orders¹³⁴, because if Claimant's Request is granted, it would interfere with Respondent's sovereign right to investigate and prosecute criminal conduct on its territory¹³⁵.
99. Respondent avers that it has the right to exercise its normal sovereign functions on its territory, as long as it acts in good faith and respects Claimant's rights¹³⁶. Respondent cites to decisions of various arbitral tribunals, which have held that a

¹²⁴ Respondent's Response, para. 91.

¹²⁵ Respondent's Response, para. 91.

¹²⁶ Respondent's Observations, para. 37.

¹²⁷ Respondent's Observations, para. 37, quoting Claimant's Comments, para. 35.

¹²⁸ Respondent's Observations, para. 38, quoting WS of V. Koroban, RWS-1, paras. 8, 15.

¹²⁹ Respondent's Observations, para. 40.

¹³⁰ Respondent's Response, para. 36; Communication RS-12, para. 4.

¹³¹ Respondent's Observations, para. 41.

¹³² Respondent's Observations, para. 41.

¹³³ Respondent's Response, para. 86.

¹³⁴ Respondent's Response, para. 88.

¹³⁵ Respondent's Response, para. 87.

¹³⁶ Respondent's Response, para. 47.

State has the right to conduct normal processes of criminal, administrative and civil justice within its territory¹³⁷, as long as such powers are exercised in good faith and whilst respecting the rights of the claimant¹³⁸. This position is not contradicted in the authorities relied upon by Claimant, which only granted interim measures when the proceedings were commenced in bad faith or hindered the claimant's ability to participate in the arbitration:

- In *Quiborax v. Bolivia* the criminal proceedings were commenced because the claimant had initiated the arbitration¹³⁹;
- In *City Oriente v. Ecuador* the criminal proceedings were being used by Ecuador to secure payment on the basis of a domestic law, which was precisely the subject of the dispute in the arbitration¹⁴⁰;
- In *Hydro v. Albania* the tribunal found that the possible incarceration of two of the claimants in Albania posed an imminent risk on their ability to participate in the arbitration¹⁴¹.

100. According to Respondent, the authorities cited differ to the present case for the following two reasons:

- First, there are no ongoing criminal proceedings in the present case, thus, the Request fails for lack of necessity, urgency and proportionality under the UNCITRAL Rules¹⁴²; and
- Second, Respondent has proven that all its investigations were carried out in good faith; therefore, Belarus should not see its right to conduct the normal processes of domestic justice restricted, as it would disproportionately harm Respondent's sovereign interests¹⁴³; more so, when the rights of third parties – such as BMP's creditors – require protection¹⁴⁴.

101. In relation to Claimant's Non-Aggravation Order that Respondent be directed to "refrain from any other actions that could further aggravate the dispute and violate the integrity of the arbitration proceedings", Respondent repeats that Claimant has failed to show how such an order is necessary, urgent or proportionate, as none of the events have aggravated this dispute, altered the *status quo* or affected the rights of the Claimant in this arbitration in any way¹⁴⁵. Further, Claimant has not explained the need for such a broad and vague order, considering the Parties'

¹³⁷ Respondent's Response, paras. 47-48, citing *SGS Société Générale de Surveillance SA v. Pakistan*, Ex. RL-22, p. 301 and *Quiborax v. Bolivia*, Ex. CL-71, para. 123.

¹³⁸ *Quiborax v. Bolivia*, Ex. CL-71, para. 123.

¹³⁹ Respondent's Response, para. 50.

¹⁴⁰ Respondent's Response, para. 51.

¹⁴¹ Respondent's Response, para. 52.

¹⁴² Respondent's Response, para. 54.

¹⁴³ Respondent's Response, para. 92.

¹⁴⁴ Respondent's Observations, para. 34.

¹⁴⁵ Respondent's Observations, para. 3.

general right to the non-aggravation of the dispute and integrity of the arbitral proceedings¹⁴⁶.

D. Abuse of process

102. Respondent states that the Tribunal has discretion to refrain from issuing interim measures if a request is made in bad faith to delay the proceedings or to harass the opposing party¹⁴⁷, which is precisely what has occurred in the present case:
103. (i) Claimant has intentionally distorted the facts and failed to disclose relevant information in order to present the Respondent in a poor light and mislead the Tribunal¹⁴⁸: Claimant was aware of the court ruling ordering the commencement of the Insolvency Proceeding since 16 August 2018¹⁴⁹; however, Claimant did not notify the Tribunal or Counsel for the Respondent of its alleged concerns, instead waiting for the investigations to take their natural course so as to accuse the Respondent of acting against the Tribunal's directions¹⁵⁰.
104. (ii) Claimant is attempting to interfere with Respondent's legitimate preparation and gathering of information and evidence for its Statement of Defence¹⁵¹: Claimant knew of the Tax Evasion Investigation since at least summer of 2017, yet failed to raise it with the Tribunal until eight months into the arbitration, indicating that Claimant's real motive for submitting the Application is to interfere with Respondent's preparation of its Statement of Defence, not to protect the procedural integrity of the arbitration or any other rights that Claimant alleges are under threat¹⁵².
105. (iii) Claimant is trying to use these arbitral proceedings to avoid any investigations or inquiries into their wrongdoings, however irrelevant they are to this dispute¹⁵³. Respondent submits that this is an abuse of process: interim measures cannot give a party immunity from any type of state control and a *carte blanche* for breaking the law¹⁵⁴. Respondent quotes the tribunal in *Quiborax v. Bolivia* which held that¹⁵⁵:

“... the international protection granted to investors does not exempt suspected criminals from prosecution by virtue of their being investors”.

¹⁴⁶ Respondent's Response, para. 95.

¹⁴⁷ Respondent's Response, para. 64.

¹⁴⁸ Respondent's Response, para. 65.

¹⁴⁹ Respondent's Observations, para. 30.

¹⁵⁰ Respondent's Observations, paras. 30-31.

¹⁵¹ Respondent's Response, para. 93; Communication R-10, 2 August 2018, p. 2.

¹⁵² Respondent's Response, para. 65.

¹⁵³ Respondent's Observations, para. 33.

¹⁵⁴ Respondent's Observations, para. 33.

¹⁵⁵ Respondent's Observations, para. 33, quoting *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures of 26 February 2010, para. 164, Ex. CL-71.

4. **DISCUSSION**

106. In this section, the Tribunal discusses and rules on the three requested interim measures submitted by Claimant under Art. 26 of the UNCITRAL Rules.

107. Claimant requests the Arbitral Tribunal to issue an order directing Respondent to¹⁵⁶:

- Abstain from initiating criminal proceedings and/or suspend any current criminal proceedings against the former and current officials of Claimant and the companies affiliated with Claimant until the completion of the arbitration [**“Order Against Criminal Proceedings”**];
- Refrain from contacting the shareholders, officials and employees of Claimant and Manolium-Engineering, without the consent from Claimant and prior authorization of the Tribunal [**“Order to Restrict Communication”**]; and
- Refrain from any other actions that could further aggravate the dispute and violate the integrity of the arbitral proceedings [**“Non-Aggravation Order”**].

108. Under the UNCITRAL Rules, the Arbitral Tribunal is empowered to grant an interim measure, defined as¹⁵⁷:

“... any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:

(a) Maintain or restore the status quo pending determination of the dispute;

(b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself”.

109. To grant the requested interim measures, Claimant's bears the burden of proving that¹⁵⁸:

“(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination”.

¹⁵⁶ Claimant's Request, para. 59; Claimant's Comments, para. 55.

¹⁵⁷ Art. 26(2).

¹⁵⁸ UNCITRAL Rules, Art. 26(3)(a), (b).

110. For the reasons discussed below, the Arbitral Tribunal has decided that under the current factual circumstances the requested interim measures are either moot or unnecessary and therefore dismisses the Request. Nevertheless, the Tribunal considers it necessary to remind the Parties of their implicit duties which are fundamental to investment arbitration proceedings and must be respected by both Parties. The Tribunal will establish its reasons for dismissing each requested order (A. – C.), and then restate the duties of the Parties (D.).

A. Order Against Criminal Proceedings

111. For the first order, Claimant requests the Arbitral Tribunal order Respondent to¹⁵⁹:

- Suspend any current criminal proceedings against the former and current officials of Claimant and Manolium-Engineering until the completion of the arbitration (a.); and/or
- Abstain from initiating criminal proceedings (b.).

112. Claimant avers that Respondent is using its police powers to take justice into its own hands by [REDACTED]¹⁶⁰. Claimant states that Respondent's [REDACTED] is intimidating Claimant's witnesses and former employees and putting the procedural integrity of this arbitration at threat¹⁶¹.

113. Respondent replies that the requested Order Against Criminal Proceedings is moot since [REDACTED].

114. Respondent adds that, even if [REDACTED], the requested Order should still fail as Claimant has not established that it is necessary to prevent current or imminent harm that is likely to occur¹⁶³, or satisfied the high burden of proof under the UNCITRAL Rules¹⁶⁴.

a. Order to suspend criminal proceedings

115. The Tribunal notes firstly that contrary to Claimant's assertion, there are no 'criminal proceedings' pending against any former or current official of Claimant or Manolium-Engineering. However, there are two investigations which were brought by Belarus to ascertain whether criminal proceedings should be brought – the Tax Evasion Investigation (i.) and the Insolvency Proceeding (ii.).

¹⁵⁹ Claimant's Request, para. 59.

¹⁶⁰ Claimant's Request, paras. 34-35; Claimant's Comments, para. 10.

¹⁶¹ Claimant's Request, para. 32.

¹⁶² Respondent's Response, para. 76; [REDACTED]

¹⁶³ Respondent's Response, para. 77.

¹⁶⁴ Respondent's Response, para. 88.

116. The Tribunal will examine the circumstances of these investigations to determine whether:

- Claimant has established that it is likely to suffer current or imminent harm or prejudice to the arbitral process itself that would not adequately be reparable by an award of damages if the measure is not ordered; and
- The investigations were brought for an improper purpose, in bad faith, or were conducted in violation of Claimant's rights, so as to justify an order restricting Respondent from initiating any criminal proceedings against the former and current officials of Claimant and Manolium-Engineering until the completion of this arbitration.

(i) The Tax Evasion Investigation

117. Based on [REDACTED], the Tribunal agrees with Respondent that the requested Order Against Criminal Proceedings is moot.

118. In any case, Claimant has failed to discharge its burden of proving that the Tax Evasion Investigation was conducted in bad faith or violated the Claimant's rights, which could justify a showing of likely imminent harm to Claimant or prejudice to the arbitral process itself, which would not be adequately reparable by an award of damages.

119. The Tax Evasion Investigation was commenced by Belarusian authorities prior to the initiation of this arbitration and after a tax audit of Manolium-Engineering published in March 2017 found that Manolium-Engineering owed unpaid taxes and fines¹⁶⁵.

120. Based on this finding, an investigation was commenced to ascertain whether the non-payment of taxes amounted to a criminal offence. [REDACTED]

121. Belarus has a sovereign right to investigate alleged tax evasion of companies operating within its territory. If this right is misused to intimidate relevant witnesses through a domestic investigation, Claimant has the burden of proving it through concrete evidence¹⁶⁷.

122. Claimant, however, has produced no evidence showing that [REDACTED], went beyond a legitimate exercise of this sovereign right: [REDACTED]

¹⁶⁵ Doc. C-186, p. 8.

¹⁶⁶ Doc. R-2, p. 2.

¹⁶⁷ *Churchill Mining and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Procedural Order No. 14, 22 December 2014, paras. 72, 87, RL-25.

[REDACTED]

123. The [REDACTED] alone are insufficient to justify Claimant's allegation of attempted intimidation. In the absence of such evidence, an order to restrict Respondent's sovereign right to investigate criminal conduct is not warranted, as Claimant has failed to discharge its burden of proving the first element required by Art. 26(3)(a), that harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to Respondent if the measure is granted.

(ii) The Insolvency Proceeding

124. The second investigation is an Insolvency Proceeding against Belarusian Foreign Enterprise Manolium-Processing (BMP), jointly owned by Claimant and Mr. Dolgov¹⁶⁸. The Insolvency Proceeding was set in motion after an application by a private third-party creditor¹⁶⁹. This is significant, as it does not support an argument of an illegitimate use of Respondent's policing powers.

125. Further, the procedures that followed appear to have been a legitimate investigation in accordance with Belarusian insolvency law, which mandates an enquiry as to whether insolvency was deliberately caused by the officers of the entity¹⁷⁰: the expert appointed by the administrator found that the management deliberately entered into transactions on disadvantageous terms causing detriment to the company's solvency and economic position¹⁷¹, then the Minsk Prosecutor's Office initiated an investigation to ascertain whether there was any evidence of false insolvency, deliberate insolvency, concealment of insolvency or obstruction of recovery of the creditors' losses¹⁷², the result of which should be rendered by 21 December 2018¹⁷³.

126. [REDACTED]

[REDACTED]

[REDACTED]

¹⁶⁸ Respondent's Observations, paras. 8-9.

¹⁶⁹ Respondent's Observations, para. 10.

¹⁷⁰ Respondent's Observations, para. 11, citing Insolvency Law of the Republic of Belarus, Art. 77(1).

¹⁷¹ Doc. R-10, p. 2.

¹⁷² Doc. R-10, p. 3.

¹⁷³ Doc. R-10, p. 3.

¹⁷⁴ Claimant's Comments, para. 11, citing Third WS of A. Dolgov, CWS-4, paras. 19-20.

[REDACTED]

[REDACTED]

127. Claimant fails to provide evidence other than a witness statement of Mr. Dolgov, of how [REDACTED] was made in bad faith, with an intent to intimidate any of these individuals or put the arbitration's procedural integrity at threat, so as to justify an order to prevent an imminent harm¹⁷⁸.

128. The Tribunal finds that Claimant has failed to discharge its burden of proving the first element required by Art. 26(3)(a), that harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and that such harm substantially outweighs the harm that is likely to result to Respondent if the measure is granted.

b. Request to abstain from initiating criminal proceedings

129. Claimant additionally requests that the Tribunal order Respondent to abstain from initiating criminal proceedings until the completion of this arbitration.

130. The Tribunal respects the sovereign right of a State to investigate criminal conduct occurring within its territory¹⁷⁹. This right does not disappear by virtue of an international arbitration, nor does the international arbitration automatically shield a claimant from investigation of any alleged breaches of the State's domestic criminal law¹⁸⁰. As tribunals have consistently held, an order that restricts the investigation or prosecution of suspected criminal conduct should only be ordered if it is absolutely necessary¹⁸¹.

¹⁷⁵ Claimant's Comments, para. 12, citing Third WS of A. Dolgov, CWS-4, para. 18.

¹⁷⁶ Doc. R 9, p. 2.

¹⁷⁷ Doc. R 9, p. 1; Claimant's Comments, paras. 13-14, citing Third WS of A. Dolgov, CWS-4, paras. 19-22.

¹⁷⁸ Claimant's Request, para. 32.

¹⁷⁹ *Sergei Viktorovich Pugachev v. The Russian Federation*, UNCITRAL. Interim Award of 17 July 2017, para. 272, Ex. CL-69; *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Order on Provisional Measures of 3 March 2016, para. 3.14, Ex. CL-77.

¹⁸⁰ *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplun v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures of 26 February 2010, para. 164, Ex. CL-71.

¹⁸¹ *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Order on Provisional Measures of 3 March 2016, para. 3.16, Ex. CL-77; *Sergei Viktorovich Pugachev v. The Russian Federation*, UNCITRAL. Interim Award of 17 July 2017, paras. 272, 298, Ex. CL-69; *Teinver S.A.*,

131. Arbitral tribunals have found that only certain circumstances warrant the granting of an interim measure to prevent or discontinue criminal proceedings initiated by the State; such as, where the criminal proceedings aggravated or extended the dispute, or where the State has taken justice into its own hands¹⁸². However, in the present case, the Claimant has not established that the Tax Evasion Investigation or the Insolvency Proceeding, have any correlation to this arbitration or put Claimant's rights in this arbitration at risk, which would justify an order to estop Respondent from commencing new criminal proceedings until the end of the arbitration.
132. Claimant has not proved that it is likely to suffer a harm that is not adequately reparable by an award of damages if the measure is not ordered, which would substantially outweigh the harm that is likely to result to Respondent if the Tribunal restricts its sovereign right to conduct criminal investigations.
133. If a situation arises where criminal proceedings are commenced against Claimant, and Claimant considers that it is at risk of current or imminent harm or that its rights in the arbitration or the arbitral process are at risk of prejudice¹⁸³, Claimant is directed to raise its concerns before the Tribunal.

B. Order to Restrict Communication

134. In its Order to Restrict Communication, the Claimant requests that the Tribunal order the Respondent to:

“Refrain from contacting the shareholders, officials and employees of Claimant and Manolium-Engineering, without the consent from Claimant and prior authorization of the Tribunal”.

135. Claimant states that Respondent's questioning is intimidating Claimant's witnesses and former employees, putting the procedural integrity of this arbitration at threat¹⁸⁴.
136. Claimant avers that [REDACTED] was likely motivated by an improper purpose¹⁸⁵, and additionally questions the motivation for Respondent's request that Mr. Dolgov include his address in his witness statement, alleging that this shows that Respondent is preparing action against Mr. Dolgov outside of this arbitration¹⁸⁶.

Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. The Argentine Republic, ICSID Case No. ARB/09/1, Decision on Provisional Measures, 8 April 2016, Ex. RL-26, para. 190.

¹⁸² *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No. ARB/06/21, Decision on Provisional Measures of 19 November 2007, paras. 61-66, Ex. CL-72; *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures of 26 February 2010, paras. 133, 141-142, Ex. CL-71.

¹⁸³ UNCITRAL Rules, Art. 26(2)(b).

¹⁸⁴ Claimant's Request, para. 32.

¹⁸⁵ Claimant's Request, para. 8.

¹⁸⁶ Claimant's Request, para. 19.

137. As the Tribunal has already dealt with [REDACTED] in the prior section (*supra* paras. 118 – 123), and [REDACTED] in relation to the Insolvency Proceeding (*supra* paras. 124 – 128), it will now address the questioning of Mr. Koroban (a.) and Respondent's request that Mr. Dolgov provide his address in his witness statement (b.).

a. Questioning of Mr. Koroban

138. The Tribunal notes that there are two contradictory versions of the former Deputy Director of Manolium-Engineering, Mr. Koroban's, meeting at the MCEC. The version provided by Mr. Koroban, and the version provided by Mr. Torot'ko and Mr. Dolgov.

139. It is Claimant's case that the Order to Restrict Communication is necessary as Mr. Koroban's contradictory versions of events is evidence of coercion, and an effort by Respondent to pressure and intimidate him into silence¹⁸⁷. As a resident of Belarus, Mr. Koroban's cooperation was motivated by a fear of criminal prosecution and a fear for his well-being, despite his allegation to the contrary¹⁸⁸. Further, Claimant alleges that Mr. Koroban's meeting with the MCEC shows that "Respondent is using its powers to collect evidence from Claimant's employees outside of the arbitral process"¹⁸⁹.

140. On the other hand, Respondent states that Mr. Koroban has not been employed by Manolium-Engineering for at least four years, thus not correlating with the requested Order as formulated¹⁹⁰. Respondent states that Claimant has failed to establish any basis on which the Order to Restrict Communication should be granted¹⁹¹, or adduce any concrete evidence in support of its accusations about the pressure on Mr. Koroban¹⁹². The fact that Mr. Koroban's first-hand account of his visit to the MCEC contradicts subsequent conversations with Mr. Torot'ko and Mr. Dolgov, does not justify Claimant's far-reaching conclusion that Mr. Koroban is acting "out of fear for his well-being" or calls "into serious question the veracity of his testimony"¹⁹³.

141. The Tribunal agrees with Respondent that Claimant has failed to provide concrete evidence in support of its allegations, which it must in order to discharge its burden of proof¹⁹⁴.

142. The Tribunal notes that whilst there are inconsistencies between Mr. Koroban's witness statement and the witness statements of Mr. Dolgov and Mr. Torot'ko, contradictory witness statements does not provide evidence of witness intimidation. Claimant has failed to substantiate its allegations of coercion and

¹⁸⁷ Claimant's Request, paras. 18, 38; Claimant's Comments, paras. 20-22.

¹⁸⁸ Claimant's Comments, para. 51.

¹⁸⁹ Claimant's Request, para. 17.

¹⁹⁰ Respondent's Response, para. 36.

¹⁹¹ Respondent's Response, para. 91.

¹⁹² Respondent's Observations, para. 40.

¹⁹³ Respondent's Observations, para. 37, quoting Claimant's Comments, para. 35.

¹⁹⁴ *Churchill Mining and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Procedural Order No. 14, 22 December 2014, paras. 72, 87, RL-25.

witness intimidation with anything other than the speculations of Mr. Dolgov and Mr. Torot'ko, that Mr. Koroban's inconsistent behaviour (which in itself is only supported by hearsay testimony) can likely be attributed to his fear "of something"¹⁹⁵.

143. In Mr. Koroban's first-hand account, he states that he attended the MCEC voluntarily and without coercion and that he is not worried about his safety¹⁹⁶. In the absence of stronger evidence to contradict these statements, Mr. Koroban's witness statement is to be believed.
144. In regard to Respondent's ability to contact other shareholders, officials and employees of Claimant and Manolium-Engineering, the Tribunal notes that Respondent has a sovereign right to conduct normal State functions in good faith and whilst respecting the rights of Claimant¹⁹⁷, and a Tribunal should not restrict the exercise of sovereign powers, in the absence of convincing evidence that such powers are being exercised in bad faith or in violation of the other party's rights.
145. In conclusion, Claimant has failed to establish that Respondent's [REDACTED] is putting the procedural integrity of this arbitration at threat. The Tribunal thus finds that in respect of its Order to Restrict Communication, Claimant has failed to satisfactorily discharge its burden under the UNCITRAL Rules, of establishing that it is likely to suffer a harm that is not adequately reparable by an award of damages if the measure is not ordered, which would substantially outweigh the harm that is likely to result to Respondent if the measure is granted.

b. Request for Mr. Dolgov's address

146. Claimant additionally questions the motivation for Respondent's demand that Mr. Dolgov include his address in his witness statement, averring that this indicates that the Respondent is preparing some action against Mr. Dolgov outside of this arbitration¹⁹⁸.
147. Respondent strongly denies Claimant's allegation, replying that it was merely requesting compliance with PO No. 1 para. 35, and in any case, Respondent already has Mr. Dolgov's address [REDACTED]¹⁹⁹.
148. The Tribunal finds Respondent's position to be more convincing.

¹⁹⁵ WS of L. Torot'ko, CWS-3, para. 26.

¹⁹⁶ WS of V. Koroban, RWS-1, paras. 8, 15.

¹⁹⁷ *SGS Société Générale de Surveillance SA v. Pakistan*, Ex. RL-22, p. 301 and *Quiborax v. Bolivia*, Ex. CL-71, para. 123.

¹⁹⁸ Claimant's Request, para. 19.

¹⁹⁹ Respondent's Response, paras. 41-43.

C. Order for Non-Aggravation

149. In its third and final order, Claimant requests that the Tribunal order Respondent to²⁰⁰:

“Refrain from any other actions that could further aggravate the dispute and violate the integrity of the arbitral proceedings”.

150. As the Tribunal will discuss below, it is widely accepted that parties in an investment arbitration have a general duty not to engage in conduct which may aggravate the dispute²⁰¹. As outlined by the tribunal in *Amco v. Indonesia*, within arbitral disputes exists a²⁰²:

“... good and fair practical rule, according to which both Parties to a legal dispute should refrain, in their own interest, to do anything that could aggravate or exacerbate the same, thus rendering its solution possibly more difficult”.

151. The Tribunal confirms that both Parties should refrain from any conduct which could have the effect of aggravating the dispute or violating the integrity of the arbitral proceedings.

152. Considering that the duty to not aggravate the dispute is a general duty implicit in the arbitral process, the Tribunal does not consider it necessary to make a specific order in this regard.

153. If the Parties require guidance as to whether any future action could aggravate the dispute or violate the integrity of the arbitral proceedings, they are encouraged to contact the Tribunal *ex ante* and request additional guidance.

D. General duties of parties in investment arbitration proceedings

154. Notwithstanding the above decision, the Tribunal wishes to remind the Parties of the four duties that are implicit in all investment arbitration proceedings, which both the State and investor must respect at all times:

- The duty to not aggravate the dispute (a.);
- The duty to not obtain evidence improperly (b.);
- The duty to not unduly influence witnesses (c.); and

²⁰⁰ Claimant's Request, para. 59.

²⁰¹ *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No. ARB/06/21, Decision on Provisional Measures of 19 November 2007, para. 57, Ex. CL-72; *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosc Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures of 26 February 2010, paras. 133-135, Ex. CL-71; *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Procedural Order No. 1 of 29 June 2009, paras. 62-64, Ex. CL-73.

²⁰² *Amco Asia v. Indonesia*, Decision on request for provisional measures of 9 December 1983, ICSID Reports, 1993, p. 412, cited in *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosc Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures of 26 February 2010, para. 135, Ex. CL-71.

- The duty to not put undue pressure on anyone related to the investor, including its directors, shareholders or employees (**d.**).
155. Respect for these duties becomes particularly paramount in investment arbitral proceedings, due to the inherent power imbalance between a State, endowed with a wealth of special sovereign powers, and a foreign investor who does not have equal power and is subject to the control of the State when operating within its jurisdiction.
156. When agreeing to arbitrate a dispute, a State has agreed to cede part of its sovereignty to be subject to the arbitration's procedural rules and the authority of the arbitral tribunal. By doing so, the State and foreign investor agree to comply with the duty to arbitrate fairly and in good faith, whilst respecting the procedural integrity of the arbitration and avoiding conduct which upsets the balance of equality between the parties²⁰³.
- a. Duty to not aggravate the dispute**
157. Parties to an investment arbitration must always observe the duty to not aggravate the dispute and to maintain the *status quo ante*, the legal situation existing prior to the institution of the arbitration. The Permanent Court of International Justice first recognized the duty on parties to not aggravate the dispute or take action that impairs the rights of the other party, when in 1939 it issued provisional measures against Bulgaria and in favour of Belgium²⁰⁴.
158. Since then, arbitral tribunals have consistently confirmed this duty, under which parties must abstain from any action which might aggravate or extend the dispute, alter the *status quo*, or take justice into their own hands²⁰⁵.
- b. Duty to not obtain evidence improperly**
159. Parties in an investment arbitration have a duty to not obtain evidence through improper means. This is derived from the obligation to arbitrate fairly and in good faith²⁰⁶, and the principle of equality of arms implicit in all international arbitrations between a State party and a foreign investor²⁰⁷.

²⁰³ Art. 17(1), UNCITRAL Rules 2010. See also *Methanex Corporation v. United States of America* (UNCITRAL), Final Award of the Tribunal on Jurisdiction and Merits, para. 54, Part II - Chapter I – p. 26; T. Wälde, “Equality of Arms in Investment Arbitration: Procedural Challenges”, in Yannaca-Small, K. “Arbitration Under International Investment Agreements: A Guide to Key Issues”; Oxford University Press (2010).

²⁰⁴ *Electricity Company of Sofia and Bulgaria (Belgium v. Bulgaria)*, Judgment of 5 December 1939, PCIJ series A/B, No 79, p. 199.

²⁰⁵ *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No. ARB/06/21. Decision on Provisional Measures of 19 November 2007, para. 57, Ex. CL-72; *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures of 26 February 2010, paras. 133-135, Ex. CL-71; *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Procedural Order No. 1 of 29 June 2009, paras. 62-64, Ex. CL-73.

²⁰⁶ *Libananco Holdings Co. Limited v. Republic of Turkey* (ICSID Case No. ARB/06/8), Decision on Preliminary Issues, 23 June 2008, para. 78 (“Nor does the Tribunal doubt for a moment that, like any

160. The duty to not obtain evidence improperly requires a Respondent State to abstain from the use of special domestic powers, for example, to investigate suspected criminal conduct, or conduct intelligence for national security purposes, to obtain evidence to defend itself in an investment arbitration. Whilst the capacity for a foreign investor to obtain evidence from a State party through improper means is significantly reduced, the duty not to engage in improper activities applies equally to a foreign investor.

161. As expressed by the tribunal in *Methanex v. USA*²⁰⁸:

“As a general principle, therefore, just as it would be wrong for the USA *ex hypothesi* to misuse its intelligence assets to spy on Methanex (and its witnesses) and to introduce into evidence the resulting materials into this arbitration, so too would it be wrong for Methanex to introduce evidential materials obtained by Methanex unlawfully”.

162. This duty to not obtain evidence through improper means is reflected in the IBA Guidelines on the Taking of Evidence, whereby arbitral tribunals are empowered to exclude evidence for compelling reasons of “fairness or equality of the Parties”²⁰⁹. Further, Art. 17(1) of the UNCITRAL Rules provides that the Tribunal must treat the parties with equality and maintain procedural fairness:

“Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties’ dispute”. [Emphasis added]

c. Duty to not unduly influence witnesses

163. It is a basic premise of both domestic and international dispute resolution that parties have a duty to refrain from any behaviour which could be seen as an attempt to exert undue influence or pressure on a witness or a potential witness. This could be regarded as a general principle of law recognized by civilized legal systems²¹⁰.

other international tribunal, it must be regarded as endowed with the inherent powers required to preserve the integrity of its own process – even if the remedies open to it are necessarily different from those that might be available to a domestic court of law in an ICSID Member State.”). See also *Cementownia "Nowa Huta" S.A. v. Republic of Turkey* (ICSID Case No. ARB(AF)/06/2), Award, para. 153.

²⁰⁷ See *Methanex Corporation v. United States of America* (UNCITRAL), Final Award of the Tribunal on Jurisdiction and Merits, para. 54, Part II - Chapter I – p. 26; T. Wälde, “Equality of Arms in Investment Arbitration: Procedural Challenges”, p. 161 in Yannaca-Small, K. “Arbitration Under International Investment Agreements: A Guide to Key Issues”; Oxford University Press (2010).

²⁰⁸ See also *Methanex Corporation v. United States of America* (UNCITRAL), Final Award of the Tribunal on Jurisdiction and Merits, para. 54, Part II - Chapter I – p. 26.

²⁰⁹ IBA Rules on the Taking of Evidence, Article 9.2.(g).

²¹⁰ Art. 38(1), Statute of the International Court of Justice.

164. As stated in the UNCITRAL Rules, a party must be given a reasonable opportunity to present its case²¹¹. To do so, a party must be able to adduce witness statements.
165. It is imperative to the functioning of any system of justice, that witnesses feel as though they are able to give free and accurate testimony. Any attempt by a party to hinder a witnesses' liberty to testify freely, whether it be through intimidation, coercion, or undue pressure in any form, constitutes a violation of the duty to arbitrate in good faith, and a violation of the procedural integrity of the arbitration²¹².
166. In *Quiborax v. Bolivia*, the tribunal found that the domestic criminal proceedings, which appeared to be motivated by the investment arbitration, restricted the ability for certain witnesses to testify in the arbitration, and thus constituted a threat to the procedural integrity of the arbitration²¹³. The tribunal additionally stated that²¹⁴:

“Even if no undue pressure is exercised on potential witnesses, the very nature of these criminal proceedings is bound to reduce their willingness to cooperate in the ICSID proceeding. Given that the existence of this ICSID arbitration has been characterized within the criminal proceedings as a harm to Bolivia, it is unlikely that the persons charged will feel free to participate as witnesses in this arbitration”. [Emphasis added]

167. If a witness is unable or unwilling to testify due to actions of the other party, this will violate the party's right to be heard and to present its case before the tribunal.

d. Duty not to exert pressure on claimant or its representatives

168. Underpinned by the obligation to arbitrate fairly and in good faith, and the right to the procedural integrity of the arbitration, is the principle that a party shall have the opportunity to access arbitration and present its claim, free from all forms of coercion and undue pressure²¹⁵.
169. Parties thus have a duty to refrain from any behaviour which could be seen as an attempt to exert any form of undue pressure on the other party or its representatives.
170. A State has a reinforced duty to abstain from using its authority as a sovereign power to exert pressure on a foreign investor or its current and former personnel,

²¹¹ Art. 17(1), UNCITRAL Rules 2010.

²¹² Art. 17(1), UNCITRAL Rules 2010; *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures of 26 February 2010, para. 123, Ex. CL-71; T. Wälde, “Equality of Arms in Investment Arbitration: Procedural Challenges”, in Yannaca-Small, K. “Arbitration Under International Investment Agreements: A Guide to Key Issues”; Oxford University Press (2010).

²¹³ Respondent's Response, para. 50.

²¹⁴ *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures of 26 February 2010, para. 146, Ex. CL-71.

²¹⁵ Art. 17(1), UNCITRAL Rules 2010.

including its directors, shareholders, employees, affiliate companies, or legal representatives, in an attempt to dissuade the bringing of a claim, impair the procedural rights of the Claimant in the arbitration, or deter a potential witness' or legal counsel's participation in the arbitral process in support of the foreign investor. In *Hydro v. Albania*, the tribunal found that the possible incarceration of two of the claimants in Albania posed an imminent risk on their ability to participate in the arbitration²¹⁶.

171. Further, as outlined by the tribunal in *Quiborax v. Bolivia*²¹⁷:

“Bolivia has the sovereign power to prosecute conduct that may constitute a crime on its own territory, if it has sufficient elements justifying prosecution. Bolivia also has the power to investigate whether Claimants have made their investments in Bolivia in accordance with Bolivian law and to present evidence in that respect. But such powers must be exercised in good faith and respecting Claimants' rights, including their *prima facie* right to pursue this arbitration”. [Emphasis added]

172. Any attempt by an investor or a State party to unduly coerce or exert pressure on the other party, would constitute a breach of the duty to arbitrate fairly and in good faith, and would violate the procedural integrity of the arbitration, and could hinder the right for the party to have its request for relief fairly considered by the Tribunal²¹⁸.

* * *

²¹⁶ *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Order on Provisional Measures of 3 March 2016, para. 3.29, Ex. CL-77.

²¹⁷ *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures of 26 February 2010, para. 123, Ex. CL-71.

²¹⁸ See for example, *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures of 26 February 2010, para. 141, Ex. CL-71; *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No. ARB/06/21, Decision on Provisional Measures of 19 November 2007, paras. 133, 141-148, Ex. CL-72 and *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Order on Provisional Measures of 3 March 2016, paras. 3.18-3.20, Ex. CL-77.

173. For all the foregoing reasons, the Arbitral Tribunal decides:
174. Not to grant Claimant's request that Respondent be ordered to abstain from initiating criminal proceedings and/or suspend any current criminal proceedings against the former and current officials of Claimant and the companies affiliated with Claimant until the completion of the arbitration.
175. Not to grant Claimant's request that Respondent be ordered to refrain from contacting the shareholders, officials and employees of Claimant and Manolium-Engineering, without the consent of Claimant and prior authorization of the Tribunal. Respondent, however, is invited to:
- (i) refrain from contacting current shareholders, officials and employees of Claimant and Manolium-Engineering without the presence of their lawyers; and
 - (ii) refrain from contacting any person who has appeared as a witness or expert for Claimant for the purpose of discussing her or his testimony.
176. To order generally that both Parties refrain from any action or conduct that could result in the aggravation of the dispute or a violation of the integrity of the arbitral proceedings; if in doubt whether a specific action or conduct might result in the violation of the above order, both Parties are recommended to approach the Tribunal *ex ante* and request additional guidance.
177. The Tribunal expects that the Parties will continue to respect their duties in the arbitration at all times, as detailed in paras. 154-172 *supra*.
178. The decision on costs is reserved.

On behalf of the Arbitral Tribunal,



Juan Fernández-Armesto
Chairman of the Arbitral Tribunal