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

« 21 » August 2025

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

Dear Mr. Doe,

1. Following the Arbitral Tribunal's Decision on the Objection to the Constitution of the Arbitral Tribunal dated 29 July 2025, the Russian Federation notes with great concern the resulting irreparable damage to the integrity of the present arbitral process.

2. The Russian Federation considers the Decision dated 29 July 2025 a fatal blow by the Arbitral Tribunal to the Russian Federation's confidence regarding the Tribunal's purported neutrality and impartiality, as well as a missed ultimate opportunity to restore due process in the present proceedings. Instead, the Tribunal compounded the already severe procedural irregularities with a manifestly improper reading of Annex VII of UNCLOS and the Rules of Procedure, effectively negating any chance of getting the arbitration back on track.

3. In international adjudication, the jurisdiction of a court or tribunal to settle a dispute is 'based on the consent of the parties and is confined to the extent accepted by them'.[1] As any other State that grants its consent to be submitted to third-party dispute settlement proceedings, the Russian Federation has, in this context, a right to due process. This encompasses, among others, the principles of procedural fairness, equality of arms, and good faith in the conduct of proceedings, which all courts and tribunals must strictly uphold at all times.

4. The Russian Federation firmly believes in international law and adheres faithfully to UNCLOS, and it has participated in good faith in these proceedings since their inception in 2019 by making all the submissions envisaged by the procedural timetable and paying its share of the arbitration costs. The Russian Federation thus demands respect for the conditions under which it gave its consent to arbitration, including compliance with the abovementioned fundamental rules of procedure in conformity with Annex VII of the Convention, the Rules of Procedure agreed upon by the Parties, and general international law. Furthermore, the impartiality of arbitrators remains a *sine*

[1] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 39, ¶88.

qua non condition for effective dispute settlement, especially in a highly politically charged case. When tangible and serious concerns about an arbitrator's perceived bias are disregarded, the very foundations of fairness and objectivity that should be at the core of any arbitration process are undermined.

5. Being vigilant over the decisions and procedural actions of international courts and tribunals is a State's essential obligation of due diligence and a duty towards its people in the defence of their interests. The Russian Federation cannot stand as a silent witness to the systemic abuse of its consent to arbitrate this dispute through the repeated misinterpretation and flouting of the limits thereof and the powers of the Tribunal and/or appointing authority, ignoring or glossing over the Russian Federation's requests for the proper application of the relevant procedural rules without adequate consideration, and one-sided rulings, ultimately leading to the improper constitution of the Tribunal.

6. Following the Arbitral Tribunal's Decision on Challenges dated 6 March 2024, the proceedings have been contaminated by a series of alarming procedural irregularities, which have caused irreparable damage to due process and the integrity of the arbitral process. Specifically:

a. the Tribunal failed to acknowledge a fundamental gap in Annex VII of UNCLOS and the Rules of Procedure regarding the appointment of replacement arbitrators as a consequence of a successful challenge;

b. the Tribunal failed to properly interpret and apply Annex VII, artificially broadening its scope in contravention of basic rules of treaty interpretation;

c. the Tribunal acted in breach of the Rules of Procedure by defaulting on its duty to adopt an *ad hoc* procedure for the proper appointment of replacement arbitrators in order to cover the aforementioned gap;

d. the Tribunal wrongly upheld the appointment of replacement arbitrators by ITLOS President in contravention of Annex VII, including the flawed consultation procedure adopted by ITLOS President for that purpose, resulting in the irregular appointment of three arbitrators;

e. the Tribunal erroneously dismissed the Russian Federation's challenge to Judge Kateka, who exhibited a politically motivated bias against the Russian Federation, specifically in the context of Russia-Ukraine relations, in blatant contradiction with its own earlier ruling regarding the challenges to Professor McRae and Judge Wolfrum;

f. the Tribunal wrongly permitted Judge Kateka and Judge Brown to participate in the deliberations and voting in respect of the ruling on the validity of their own appointments;

g. while still being seised with Russia's objection relating to the Tribunal's irregular constitution, the Tribunal wrongly authorised an untimely publication of confidential submissions relating to that objection, while at the same time only publishing in full Ukraine's position and misrepresenting Russia's arguments by redacting and curtailing them, in breach of the equality of arms.

7. It is well-established that serious irregularities in the adjudication process may, 'on the one hand, […] give rise to a very serious doubt directly affecting the intrinsic value of a judicial decision while, on the other hand, produc[e] effects that undermine the very authority of the Award and its capacity to serve as a basis for dispute settlement.'[2] In this context, actions exceeding conferred powers (thus *ultra vires*), serious departures from fundamental rules of procedure and the improper constitution of a tribunal constitute generally recognised grounds of nullity of an arbitral award under international law.[3] The Russian Federation considers that the abovementioned flaws in the present proceedings are such that the integrity of the arbitration and the legitimacy of the Tribunal have been irreparably damaged, and grounds of nullity have been triggered.

8. For these reasons, it is with deep regret that the Russian Federation has taken the decision to withdraw from the present proceedings and will not consider itself bound by any procedural order or award that the Arbitral Tribunal may render. Given the importance of this decision, the Russian Federation finds it appropriate to lay down in this letter its position with respect to the systemic procedural irregularities that have tainted and compromised the arbitral process in this case, and which the withdrawal is a consequence of.

A. THE ARBITRAL TRIBUNAL'S INCORRECT INTERPRETATION AND APPLICATION OF ARTICLE 3 OF ANNEX VII OF UNCLOS AND THE RULES OF PROCEDURE

9. The Russian Federation sustains that the disqualification of Professor McRae and Judge Wolfrum was not followed by a replacement procedure in accordance with the law. Since no

[2] *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, Judgment of 12 November 1991, Joint Dissenting Opinion of Judges Aguilar Mawdsley and Ranjeva, ¶7.

[3] ILC Model Rules on Arbitral Procedure, Article 35, in *Yearbook of the International Law Commission, 1958*, vol. II, p. 86; ICSID Convention, Article 52. See also S. Hamamoto, Legitimacy of International Adjudication in Max Planck Encyclopedia of International Procedural Law: '…a decision of a court rendered beyond 'the extent accepted by' the disputing parties is *ultra vires* and therefore null and void'.

procedure for replacing arbitrators removed as a result of a successful challenge is established by either Annex VII of UNCLOS or the Rules of Procedure, it was incumbent upon the Arbitral Tribunal to establish such procedure on an *ad hoc* basis in accordance with Article 1(2) of the Rules of Procedure. Since April 2024, the Russian Federation made multiple requests that the incumbent members of the Arbitral Tribunal do so.[4] These requests were not acted upon.

10. Ukraine took advantage of this situation and unilaterally petitioned ITLOS President with a request to appoint replacement arbitrators. However, he did not have the power to make such appointments in the circumstances. Indeed, as the Russian Federation has explained in its submissions, the procedure under Annex VII of UNCLOS that would allow ITLOS President to do so was not triggered. The Arbitral Tribunal upheld Ukraine's frivolous action, despite being seised with the Russian Federation's request to adopt an appropriate procedure at the time of Ukraine's petition to ITLOS President.

11. Despite the Russian Federation's objections to this course of action, ITLOS President took it upon himself to make the appointments. In doing so, he did not make proper arrangements that would allow the Russian Federation to effectively participate in consultations in person. This irregular procedure, condoned by the Arbitral Tribunal, ultimately resulted in the illegitimate appointments of Judge James Kateka, Professor Joanna Mossop and Judge Kathy-Ann Brown.

12. The Arbitral Tribunal's Decision on the Objection to the Constitution of the Arbitral Tribunal dated 29 July 2025, and specifically on the matter of the applicability of Article 3 of Annex VII and the Rules of Procedure to the replacement of disqualified arbitrators in this case, does not, in the view of the Russian Federation, withstand scrutiny. The Arbitral Tribunal, put simply, incorrectly interpreted Article 3, ignoring its plain text, related well-established State practice and authoritative scholarly writings. This has a direct impact on the proper constitution of the Tribunal and on the validity of any decision that may be rendered by it.

i. <u>The existence of a gap in Annex VII and the Rules of Procedure regarding the replacement of arbitrators following a successful challenge</u>

13. According to Article 1 of the Rules of Procedure:

> 1. The arbitration shall be conducted in accordance with these Rules and the relevant provisions of the 1982 United Nations Convention on the Law of the Sea (the "Convention"), including Annex VII to the Convention. These

[4] *See* Letter from the Agent of the Russian Federation dated 30 April 2024; Letter from the Agent of the Russian Federation dated 7 May 2024; Letter from the Agent of the Russian Federation dated 29 June 2024; Letter from the Agent of the Russian Federation dated 3 July 2024; Letter from the Agent of the Russian Federation dated 10 July 2024.

> Rules are subject to such modification or additions as the Arbitral Tribunal may determine after ascertaining the views of the Parties.
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> 2. To the extent that any question of procedure is not expressly governed by these Rules or by Annex VII to the Convention or other provisions of the Convention, the question shall be decided by the Arbitral Tribunal after ascertaining the views of the Parties.

14. No procedure for the challenge of arbitrators nor for the appointment of replacement arbitrators following a successful challenge is envisaged by the Rules of Procedure. The Rules, in their relevant part (Article 6), provide as follows:

> In the event of withdrawal, incapacity or death of an arbitrator during the course of the proceedings, the vacancy shall be filled in the manner prescribed for the initial appointment of the arbitrator in question in Article 3 of Annex VII to the Convention, with the understanding that the time periods stipulated in that Article should be calculated from the date of notification to the Parties of the withdrawal, incapacity or death of the arbitrator.

15. As is evident from this provision, the Rules of Procedure only govern instances of 'withdrawal, incapacity or death of an arbitrator during the course of the proceedings.' This is a *numerus clausus* list. Replacement after a successful challenge is not included and thus the existence of a gap is apparent. This understanding was confirmed by the Arbitral Tribunal itself on multiple occasions. In 2023, for example, the Tribunal established an *ad hoc* procedure for the consideration of the Russian Federation's challenges to Professor McRae and Judge Wolfrum.[5] Subsequently, in 2024, the Tribunal explicitly stated in its in Procedural Order No. 9:

> In Article 6 of its Rules of Procedure, the Arbitral Tribunal chose to deal with the application of the term in Article 3, subparagraph (e), of Annex VII to the Convention, 'the manner prescribed for [their] initial appointment', in the case of filling a vacancy in the event of withdrawal, incapacity or death of an arbitrator.[6]
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> Notably, Article 6, paragraph 1, of the Rules of Procedure does not refer to the event of disqualification of an arbitrator upon a successful challenge by a Party.[7]

16. It follows that the Rules of Procedure do not apply to the situation of arbitrator replacement following a successful challenge. Pursuant to the Tribunal's own finding, this called for the immediate application of Article 1(2) of the Rules of Procedure. This did not occur.

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[5] *See* Second Letter from the Registry dated 1 December 2023.

[6] Procedural Order No. 9, ¶43.

[7] Procedural Order No. 9, ¶44.

17. The same is true for Annex VII of UNCLOS. Article 3 of Annex VII does not include any provision that would apply in such instances:

a. Article 3(d) only governs the *initial* appointment of arbitrators. It establishes a 60-day period for the parties to negotiate, which starts to run upon the 'receipt of notification [of the institution of proceedings] referred to in article 1 of this Annex'.

b. Article 3(e) of Annex VII contains a subsidiary appointment mechanism that can only come into play after the procedure under Article 3(d) has failed to result in an appointment 'within 60 days of receipt of the notification referred to in article l of this Annex', referring again to the notification of the institution of proceedings;

c. Article 3(f) of Annex VII, in turn, provides for the filling of vacancies on the tribunal 'in the manner prescribed for the initial appointment', which necessarily includes the provisions of both Article 3(d) and Article 3(e), as the procedures established by these paragraphs are interdependent. This rule could not be applied to the present case because the 60-day period from the receipt of the aforementioned notification had long since expired, and no other provisions in Annex VII stipulate any alternative date for the commencement of this period.

18. Once again, the Arbitral Tribunal itself explicitly confirmed that the notification triggering the 60-day period under Article 3(d) is indeed *only* the notification of the institution of proceedings; that Article 3(f) cannot cover this time period in the present situation; and that there was a disagreement between the Parties on how to calculate this time period:

> The 'notification referred to in article l of this Annex', is the written notification addressed by Ukraine to the Russian Federation by which it submitted the dispute between them to the arbitral procedure provided for in Annex VII. The notification dated 1 April 2019 was received by the Russian Federation on the same date. Clearly, then, the term 'the manner prescribed' cannot incorporate time periods commencing on the receipt of such notification. The Parties have differed on how, instead, the time period referred to in subparagraph (d), 'within 60 days of receipt of the notification referred to in article l of this Annex', is to be read.[8]

19. Due to the existence of this gap, the Rules of Procedure for this arbitration establish a specific rule in Article 6, quoted above,[9] expressly providing that, when the procedure under Article 3 of Annex VII is to be applied in cases of withdrawal, incapacity or death of an arbitrator,

[8] Procedural Order No. 9, ¶40.

[9] See above, ¶14.

'the time periods stipulated in that Article should be calculated from the date of notification to the Parties of the withdrawal, incapacity or death of the arbitrator'. Article 6, read in conjunction with Article 3 of Annex VII, leaves no doubt as to the intention to close the gap in Annex VII by providing a solution specifically tailored to this effect: that the 60-day time period may be calculated not from the date of receipt of the notification of the institution of proceedings, but from the date of the notification of the withdrawal, incapacity or death of an arbitrator.

20. Nevertheless, this solution does not cover instances of arbitrator replacement *after a successful challenge* – as confirmed by the Arbitral Tribunal's aforementioned finding that such instances are not caught by Article 6 of the Rules of Procedure.[10]

21. Accordingly, as per Article 1(2) of the Rules of Procedure, because arbitrator replacement following a successful challenge is not expressly governed by Annex VII or the Rules, the question was thus to be 'decided by the Arbitral Tribunal after ascertaining the views of the Parties'. However, the Tribunal failed to do so.

ii. <u>The Arbitral Tribunal's refusal to rule on the critical issues of disagreement between the Parties prior to the appointments made by ITLOS President</u>

22. Despite its obligation under Article 1(2) of the Rules of Procedure to decide upon any question of procedure not expressly governed by the latter or UNCLOS, and despite the repeated requests by the Russian Federation to that effect,[11] the Arbitral Tribunal refused to rule on the critical issues of disagreement between the Parties regarding the proper procedure governing the appointment of replacement arbitrators after a successful challenge. To quote:

> The Acting President and the other members of the Arbitral Tribunal wish to emphasize that their suggestions to the Parties on the procedure for the appointment of replacement arbitrators were predicated upon the agreement of the Parties. In the absence of such agreement, the Arbitral Tribunal will not seek to provide any further guidance to the Parties on the further procedure.[12]
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> The Arbitral Tribunal would emphasize that, as indicated in paragraph 45 of Procedural Order No. 9, the Acting President and the other members of the Arbitral Tribunal had, in their correspondence with the Parties, been careful not to make rulings on what would be a proper interpretation of the provisions of Annex VII to the Convention on the appointment of replacement arbitrators. Their suggestions had been based on their views

[10] See above, ¶14.

[11] See Letters from the Agent of the Russian Federation dated 30 April, 7 May, 13 May, 17 May, 3 July and 10 July 2024.

[12] Letter from the Registry dated 12 July 2024.

> with respect to the interests of good order in the progression of the arbitration and consequently on the desirability of agreement between the Parties.[13]

23. The Arbitral Tribunal continued to insist on this position in its Decision of 29 July 2025:

> It must be noted that the Arbitral Tribunal also expressed the view on at least two occasions that, while the Parties were attempting to reach agreement, it did not wish to take a position on the correct interpretation of Article 3 of Annex VII.[14]

24. Even after Ukraine's unilateral request to ITLOS President for the appointment of replacement arbitrators made on 8 July 2024, and the Russian Federation's renewed requests for a ruling on the principal matter of disagreement between the Parties dated 3 and 10 July 2024, the Arbitral Tribunal declined to perform its functions by providing a proper interpretation of the relevant rules and filling the existing gaps therein.

25. On 18 July 2024, in a bizarre ignorance of the facts and plain wording of the rules governing the proceedings, the Arbitral Tribunal held in Procedural Order No. 9 as follows:

> In its request for a ruling, the Russian Federation has not identified any question of procedure which, in the terms of Article 1, paragraph 2, of the Rules of Procedure of the Arbitral Tribunal, "is not expressly governed by these Rules [of Procedure] or by Annex VII to the Convention or other provisions of the Convention", and the Arbitral Tribunal will not rule, in the abstract, on questions outside this scope…[15]
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> Accordingly, for the reasons set out above, the Acting President and the other members of the Arbitral Tribunal, by a majority of two to one, *reject* the request of the Russian Federation that the Arbitral Tribunal rule on the procedure for the appointment of replacement arbitrators.[16]

26. The Arbitral Tribunal later confirmed, in its Decision of 29 July 2025, that in Procedural Order No. 9 it 'did not purport to rule on the interpretation or application of Annex VII'.[17]

27. The above observations of the Tribunal in Procedural Order No. 9 were made despite the fact that, in its letter of 3 July 2024, the Russian Federation reiterated its position that the Rules

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[13] Letter from the Registry dated 13 August 2024.

[14] Decision on the Objection to the Constitution of the Arbitral Tribunal dated 29 July 2025, ¶133.

[15] Procedural Order No. 9, ¶48.

[16] Procedural Order No. 9, ¶50.

[17] Decision on the Objection to the Constitution of the Arbitral Tribunal dated 29 July 2025, ¶138.

of Procedure and the provisions of Annex VII do not expressly govern the specific matter of appointment of replacement arbitrators after a successful challenge, and the fact that the Arbitral Tribunal itself, in its decision of 18 July 2024, confirmed critical aspects of the Russian Federation's position to be accurate.[18]

28. This refusal by the Arbitral Tribunal, at a critical juncture in these proceedings, to fulfil its duties led to the purported appointment of replacement arbitrators by ITLOS President not only in contravention of the rules applicable to this arbitration, but also without any consideration of the Russian Federation's objections, neither by the Arbitral Tribunal nor by ITLOS President.

iii. ITLOS President's refusal to take into consideration the disagreement between the Parties regarding matters of procedure unresolved by the Arbitral Tribunal

29. In his decision of 8 August 2024 to appoint two replacement arbitrators, ITLOS President disregarded the objections of the Russian Federation concerning the impropriety of the procedure that was being followed. In fact, President Heidar did not even acknowledge these objections in his correspondence with the Russian Federation. His comment on the matter was limited to repeating the Arbitral Tribunal's view that 'Professor McRae and Judge Wolfrum were appointed as members of the Arbitral Tribunal, and Professor McRae as its President, by ITLOS President. Thus, in accordance with Article 3, subparagraph (e), of Annex VII, "the manner prescribed for [their] initial appointment" under subparagraph (f) for filling the vacancies resulting from the successful challenges to Professor McRae and Judge Wolfrum is that outlined in Article 3, subparagraph (e).'

30. Just like the Arbitral Tribunal, ITLOS President did not consider the objections of the Russian Federation on their substance, disregarding the fundamental issues of the Parties' disagreement on the interpretation of the rules governing the present arbitration.

iv. The Arbitral Tribunal's failure to properly address the gap in Article 3(d) of Annex VII and the Rules of Procedure

31. The Arbitral Tribunal, much to the great regret of the Russian Federation, repeatedly mishandled the issue of properly interpreting and identifying the starting point for the 60-day negotiating period. Despite the issue being central to the Parties' disagreement, the Arbitral Tribunal considered it to be 'moot'. ***First***, in its Procedural Order No. 9, the Tribunal stated that 'the question of the beginning point of the "60-day period" referred to in Article 3 of Annex VII to

[18] See above, ¶¶15, 18.

the Convention, a question on which, as noted above, the Parties were not agreed at that time … has become moot'.[19] ***Second***, in its Decision on the Objection to the Constitution of the Arbitral Tribunal dated 29 July 2025, the Tribunal again ignored this paramount issue when upholding the replacement appointments made by ITLOS President and finding 'no irregularities' in his application of Article 3 for the reason that, 'past a certain point, the dispute on when to reckon the 60 days [stipulated by Article 3(d) of Annex VII for the Parties to agree upon arbitrator candidates] became moot'.[20] No meaningful explanation was provided for this alleged 'mootness'.

32. The issue was in fact never 'moot'. It remained a critical point of disagreement between the Parties regarding the interpretation and application of the rules applicable to this arbitration in a situation of appointment of replacement arbitrators after a successful challenge. As discussed above, pursuant to the provisions of Article 3(d), the right to petition ITLOS President in this case could only arise when 60 days lapse following one specific event – the receipt of a 'notification [of the institution of proceedings] referred to in article 1 of this Annex'. The Tribunal made it clear that this notification has nothing to do with the arbitrator replacement procedure.[21]

33. Accordingly, Article 3 of Annex VII is silent in respect of when the 60-day negotiation period – if it were applicable to the procedure of appointing arbitrators after a successful challenge – starts to run in the absence of any provisions on the relevant notification.

34. One of the most cited commentaries to the Convention, the Virginia Commentary, in discussing the procedures governed by Article 3, clearly states that the 60-day time limit is to be counted 'from the date of initial notification of the institution of proceedings' – it does not allow for the expansive interpretation adopted by the Tribunal.[22]

v. <u>The Arbitral Tribunal's incorrect and overreaching interpretation of Articles 3(e) and 3(f)</u>

35. Perhaps the most glaring example of the Arbitral Tribunal's mishandling of the procedure is its gross misinterpretation of Articles 3(e) and 3(f) of Annex VII, which led to a manifestly wrong reading of ITLOS President's role in appointing arbitrators, greatly expanding its scope in clear contradiction with the ordinary meaning of the provisions, their authoritative interpretation, and long-time practical application.

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[19] Procedural Order No. 9, ¶47.

[20] Decision on the Objection to the Constitution of the Arbitral Tribunal dated 29 July 2025, ¶140.

[21] Procedural Order No. 9, ¶40, cited above in ¶18.

[22] Myron H. Nordquist, et al. (eds.), *United Nations Convention on the Law of the Sea: A Commentary* (2014), ¶A.VII.6.

36. The plain text of Article 3(f) merely states that vacancies shall be filled in the 'manner prescribed for the initial appointment', while Article 3(e) indicates that the ITLOS President 'shall make the necessary appointments' 'within a period of 30 days of the receipt of the request and in consultation with the parties'. Critically, however, this request can only be made by one of the Parties to the dispute 'within two weeks of the expiration of the aforementioned 60-day period' as set forth in Article 3(d) of Annex VII. This means that the intervention of the ITLOS President in the appointment process may only occur after the primary mechanism of appointment set by Article 3(d) – by agreement of the Parties – has been exhausted.

37. Contrary to the plain text of Annex VII, the Tribunal determined in its Decision dated 29 July 2025 that the procedure set in Article 3(e) could somehow be applied independently – and irrespectively – of the fulfillment of the prior (triggering) procedure set in Article 3(d), claiming that the phrase 'in the manner prescribed for the initial appointment' in Article 3(f) refers *only* to the procedure of Article 3(e), regardless of the triggering conditions set in Article 3(d):

> Article 3(f) of Annex VII states that '[a]ny vacancy shall be filled in the manner prescribed for the initial appointment.' The Russian Federation does not claim—nor could it—that its successful challenge against Professor McRae and Judge Wolfrum did not create a 'vacancy' on the Arbitral Tribunal. Accordingly, it is clear that Article 3(f) applies and expressly governs the situation at hand. The only remaining question is one of interpretation of Article 3(f), and in particular the phrase "in the manner prescribed for the initial appointment", which for the vacancies resulting from the successful challenges to Professor McRae and Judge Wolfrum is that outlined in Article 3(e).[23]

38. This claim by the Tribunal that 'the manner prescribed for the initial appointment' refers only to the procedure under Article 3(e) is manifestly contrary to the fact that this procedure is directly tied to the expiration of the 60-day period set in Article 3(d), and neither Article 3(e) nor Article 3(f) envisage any alternative method for triggering the commencement of that 60-day period. By adopting that position, the Tribunal has effectively cut off the main part of the arbitrator appointment procedure – by agreement of the Parties – in all cases when a replacement of arbitrators previously appointed by ITLOS President occurs, instead making ITLOS President the *only* source of arbitrator appointment in such cases.

39. It is telling that none of the Parties, nor the Tribunal itself, has ever put forward such an expansive and overreaching interpretation of Article 3(e) and 3(f) of Annex VII. On the contrary, everyone involved in the proceedings recognised that Article 3(e) could not be triggered without

[23] Decision on the Objection to the Constitution of the Arbitral Tribunal dated 29 July 2025, ¶142.

first exhausting the procedure under Article 3(d), with the actual point of contention being the date of inception of the 60-day period (which Ukraine claimed has commenced upon receipt of the notification of 'resignations' by Professor McRae and Judge Wolfrum, while Russia argued it never commenced because Annex VII did not cover a situation of removal of arbitrators after successful challenge, and an ad hoc procedure had to be established by the Tribunal in accordance with Article 1(2) of the Rules of Procedure).

40. At no point in the lengthy communications with the Parties, following the Decision on Challenges dated 6 March 2024 concerning the removal of Professor McRae and Judge Wolfrum, did the Tribunal ever suggest or imply a possibility of direct application of Article 3(e) in circumvention of the prior procedure established in Article 3(d). On the contrary, the Tribunal repeatedly indicated that Article 3(d) procedure is obligatory and should be followed. For instance, in its letter to the Parties of 16 May 2024, the Tribunal expressed the following position:

> [T]he Acting President and the other members of the Arbitral Tribunal are of the view that it is in the interests of good order in the progression of this arbitration that the arbitrators to replace Professor McRae and Judge Wolfrum be appointed by agreement between the Parties, if such agreement is possible.

41. If, as the Tribunal now claims, the procedure under Article 3(e) were to be applied directly through the operation of Article 3(f), with no regard to any prior procedure under Article 3(d), there would be no need for any agreement between the Parties, as ITLOS President would have then been empowered to appoint replacement arbitrators immediately after the removal of Prof. McRae and Judge Wolfrum. However, the Tribunal made no mention of this possibility and instead encouraged the Parties to follow the provisions of Article 3(d):

> Accordingly, since it is clear that the efforts to reach agreement have only recently commenced, the Acting President and the other members of the Arbitral Tribunal express the view that it would be beneficial for the Parties to engage in further efforts to achieve such agreement. However, the Acting President and the other members of the Tribunal […] would preliminarily point out that […] the proper application of Article 3 of Annex VII and the Rules of Procedure is not as straightforward as either Party submits. This reinforces their view that it would be beneficial for the Parties to engage in further efforts to achieve agreement, at least until, in the first instance, 30 May 2024, at which time a re-evaluation could take place. If the Parties were to agree to engage in these efforts, *they should explicitly agree on a suspension of the possible limiting deadline of "two weeks" set in the final*

> *sentence of Article 3(d) of Annex VII*, pending their further efforts. [*Emphasis* added].[24]

42. Here, the Tribunal explicitly referred to the deadline set in Article 3(d) as an operative requirement that had to either be fulfilled or suspended by agreement between the Parties as per the chapeau of Article 3. This confirms that the Tribunal proceeded from the assumption that the requirements of Article 3(d) applied, including relevant time periods, with no possibility of their circumvention via direct application of the procedure set in Article 3(e).

43. Similarly, Ukraine itself never acted in accordance with an interpretation that Article 3(e) may be applied directly in circumvention of Article 3(d). In its communications of 6 May, 7 May, 13 May, 16 May and 18 May 2024, Ukraine repeatedly expressed readiness to pursue consultations in accordance with the procedure set out in Article 3(d), even insisting upon a 'suspension' of the two-week period stipulated in Article 3(d) which it perceived as obligatory – the period which, in turn, could only commence after the expiration of the 60-day period, the inception of which was at the core of the disagreement between the Parties regarding the interpretation of Annex VII. True to this perception, instead of immediately requesting ITLOS President to appoint arbitrators, Ukraine engaged in consultations with Russia in purported accordance with the provisions set out in Article 3(d).

44. In the initial letter dated 6 May 2024, setting out Ukraine's legal position regarding reappointment procedure, Ukraine's Agent stated clearly:

> The Rules of Procedure for this arbitration, consistent with Annex VII, provide for arbitrator vacancies to be filled in the manner prescribed for the initial appointment of the arbitrator in question in Article 3 of Annex VII. Following the Decision on the Challenges, Professor McRae and Judge Wolfrum notified their resignation from the Tribunal on 6 March 2024. Consistent with the Rules, the Parties had 60 days following this date of notification to attempt to reach agreement on replacement arbitrators under Article 3(d) of Annex VII. Following expiration of the 60-day period, either Party has two weeks pursuant to Article 3(d) to request that the ITLOS President make the appointments under Article 3(e).

45. While Ukraine was mistaken in assuming that the inception date for the 60-day period stipulated in Article 3(d) was the date of notification of the alleged 'resignations' of Professor McRae and Judge Wolfrum, Ukraine still held no doubt that the procedure set out in Article 3(d) – including the 60-day period – had to be exhausted before an appeal to ITLOS President could be made under Article 3(e).

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[24] Letter from the Registry dated 16 May 2024.

46. In its letter dated 1 July 2024, Ukraine's Agent again communicated clearly that the provisions of Article 3(d) were obligatory:

> Consistent with the Rules of Procedure and Article 3 of Annex VII to the Convention, the Parties are obligated to engage in efforts to attempt to reach agreement on replacement arbitrators during a 60-day period. The Parties have been in disagreement over when that 60-day period started to run, but further to the Tribunal's suggestion of 16 May 2024, both Parties agreed to temporarily suspend the possible time-limiting deadlines of Article 3(d) to enable the Parties to engage in further efforts to attempt to reach agreement.

47. Indeed, Ukraine only proceeded to petition ITLOS President with a request for appointment of replacement arbitrators on 8 July 2024, thus confirming its belief that the 60-day period set in Article 3(d) had to be respected. At no point in time did Ukraine ever claim or suggest, in correspondence with the Tribunal, the possibility of direct application of the procedure set in Article 3(e) in disregard of the prior procedure set in Article 3(d).

48. In alleged support of its wrong interpretation, the Tribunal refers to the Virginia Commentary on UNCLOS.[25] However, this authoritative work points in exactly the opposite direction, stating clearly that recourse to ITLOS President under Article 3(e) may only be had after all procedures under Article 3(d) – expressly including the 60-day period – have been exhausted. Furthermore – and critically – the Virginia Commentary expressly confirms that the 60-day period commences 'from the date of the initial notification of the institution of proceedings', not from any alternative subsequent date.[26] Finally, the Commentary does not address at all the issue of replacement of arbitrators after a successful challenge, confirming that this was indeed a gap in the regulation provided by Annex VII.

49. State practice also supports this view and militates against the Tribunal's expansive and overreaching interpretation. It is highly indicative that the rules of procedure in many Annex VII arbitrations commonly stipulate detailed procedures to be followed in the circumstances warranting the replacement of arbitrators, such as their death or incapacity. The Rules of Procedure for the present arbitration contain such a rule in Article 6. Similar provisions can be found in other sets of arbitration rules.[27] Some of these rules sought to cover the gap more comprehensively, by

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[25] Decision on the Objection to the Constitution of the Arbitral Tribunal dated 29 July 2025, ¶143.

[26] Myron H. Nordquist, Shabtai Rosenne and Louis B. Sohn (eds.), *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. V (Martinus Nijhoff Publishers, 1989), pp. 427-428.

[27] *See*, *e.g.*, *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Rules of Procedure (29 March 2012), Article 7; *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, Rules of Procedure (27 August 2013), Article 9; *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, Rules of Procedure (17 March 2014), Article 9.

including not only death or incapacity, but also the consequences of a successful challenge. For instance, the rules of procedure in the *Chagos MPA* arbitration provided as follows:

> 1. If a challenge to the appointment of an arbitrator is sustained or in the event of the death or withdrawal of an arbitrator during the course of the proceedings, a substitute arbitrator shall be appointed:
>
> (a) Where the arbitrator being replaced was originally appointed by one of the Parties in accordance with articles 3(b) or 3(c) of Annex VII to the Convention, by the Party making the original appointment if possible within 30 days, or otherwise not later than 60 days, from the date of any challenge being sustained or the death or withdrawal of an arbitrator;
>
> (b) Where the arbitrator being replaced was originally appointed by the President of the International Tribunal for the Law of the Sea in accordance with article 3(e) of Annex VII to the Convention, if the Parties do not agree otherwise within 30 days of the challenge being sustained or of the death or withdrawal of the arbitrator, by the President of the International Tribunal for the Law of the Sea, after consultation with the Parties.[28]

50. Needless to say, such 'stop-gap' provisions would have been wholly unnecessary, had the question of the 60-day period been 'moot' and had the provisions of Article 3(e) been capable of being applied in circumvention of the primary appointment procedure set out in Article 3(d).

51. Since the Rules of Procedure for the present arbitration only contained a 'stop-gap' provision capable of covering death, withdrawal or incapacity of arbitrators, but not arbitrator appointment after a successful challenge (as the Tribunal itself confirmed), this remaining *lacuna* was to be filled by the Arbitral Tribunal by the adoption of *ad hoc* rules in pursuance of Article 1(2) of the Rules of Procedure. However, the Tribunal repeatedly failed to do so, instead first ignoring the issue entirely, and then opting for a manifestly overreaching reading of Article 3 that is contrary to its plain text, authoritative scholarship and State practice.

52. The consequence of the above is the improper constitution of the Arbitral Tribunal in breach of fundamental rules of procedure.

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[28] *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Rules of Procedure (29 March 2012), Article 7.

vi. The Practical effect of Article 3

53. The Arbitral Tribunal went on to justify its interpretation of Article 3 by stating that the Russian Federation's approach would deprive this Article of its *effet utile*.[29] The Russian Federation cannot agree with this position.

54. In fact, it is the Tribunal's interpretation of Annex VII that deprives of practical effect a whole slew of legal norms:

a. Article 3(d) as the primary method of arbitrator appointment in Annex VII – in all cases after removal of arbitrators previously appointed by ITLOS President (since according to the Tribunal, new arbitrators should then be automatically appointed by ITLOS President with no prior attempts to secure an agreement of the Parties);

b. Article 6 and Article 1(2) of the Rules of Procedure – in all cases related to arbitrator reappointment. If, as it is suggested by the Tribunal, Article 3 of Annex VII were to provide a comprehensive regulation of the replacement procedure, there would be no need to supply the Rules of Procedure with the rule of Article 6(1) supplementing Article 3 of Annex VII and specifying particular instances of filling arbitrator vacancies by, in particular, providing that, in cases of withdrawal, incapacity or death of an arbitrator, the Parties receive a respective notification that is intended to commence the replacement process, which is not the notification of the institution of proceedings referred to in Article 3(d) of Annex VII.

55. The Arbitral Tribunal recognised this in Procedural Order No. 9 by stating that:

> In Article 6 of its Rules of Procedure, the Arbitral Tribunal chose to deal with the application of the term in Article 3, subparagraph (e), of Annex VII to the Convention, 'the manner prescribed for [their] initial appointment', in the case of filling a vacancy in the event of withdrawal, incapacity or death of an arbitrator.[30]

56. If, as the Tribunal suggested, Article 3(e) were to automatically trigger the application of Article 3(f) in all cases when the departing arbitrator had been appointed by ITLOS President, regardless of the expiration of time limits stipulated by Article 3(d), there would be no need to include in the Rules of Procedure a special provision governing the calculation of these time limits in the events of death, withdrawal, or incapacity of arbitrators.

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[29] Decision on the Objection to the Constitution of the Arbitral Tribunal dated 29 July 2025, ¶141.

[30] Procedural Order No. 9, ¶43.

57. Equally, should Article 3(e) of Annex VII be sufficient to regulate the substitution of successfully challenged arbitrators, other Annex VII tribunals would not have had to include detailed provisions governing this procedure in their Rules of Procedure.[31]

58. This is not to mention the mootness, in that case, of respecting the 60-day time limit under Article 3(d) – respect which was in fact emphasised by the Arbitral Tribunal itself and both Parties during their negotiations regarding the appointment of arbitrators in the present proceedings. If the Tribunal's current interpretation were correct, Ukraine could have reached out to ITLOS President immediately after the Decision on the Challenges – which, evidently, was not the case.

59. Likewise, the Arbitral Tribunal's interpretation of Article 3 would render Article 1(2) of the Rules of Procedure ineffective. This Article testifies that there may well be instances which are not governed either by the Rules of Procedure or UNCLOS, and vests the Arbitral Tribunal with a gap-filling role in such situations. The Tribunal's refusal to apply this Article in the presence of a clear gap in UNCLOS and the Rules of Procedure constituted a failure by the Tribunal to properly fulfil its duties.

B. THE ARBITRAL TRIBUNAL'S ERRONEOUS ENDORSEMENT OF THE FLAWED PROCEDURE BEFORE ITLOS PRESIDENT

60. The Decision on the Objection to the Constitution of the Arbitral Tribunal dated 29 July 2025 further validated the appointments made by ITLOS President, despite the fact that the arbitrator replacement process was riddled with substantial procedural flaws and deficiencies.

61. ***First***, as explained above, ITLOS President was seised of Ukraine's request to appoint arbitrators at the time when the Arbitral Tribunal was considering the Russian Federation's request to establish an *ad hoc* reappointment procedure. Therefore, ITLOS President should have refused to act upon Ukraine's request, or at least postponed any action, based on considerations of deference and comity. Nevertheless, ITLOS President proceeded to initiate the reappointment process with no regard to the proceedings before the Arbitral Tribunal.

62. ***Second***, ITLOS President in any event did not have the competence to review whether he had the power to act in the instant case. ITLOS President's functions are strictly outlined in UNCLOS and do not extend to making a decision in respect of the proper appointment procedure

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[31] *See*, *e.g.*, *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Rules of Procedure (29 March 2012), Article 7; *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, Rules of Procedure (27 August 2013), Article 9; *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, Rules of Procedure (17 March 2014), Article 9.

that should apply. This notwithstanding, ITLOS President – well-informed that there was a dispute between the Parties in respect of the applicable procedure and fully appraised of the Parties' arguments in this regard[32] – went on to swiftly side with the Claimant in this dispute, thereby exceeding the extent of his powers under UNCLOS. Notably, the interpretation endorsed by ITLOS President was the one that allowed him to make arbitrator appointments with no regard to the fulfillment of prior procedure set in Article 3(d) of Annex VII, thereby expanding his own appointment powers in contravention with the rules of UNCLOS.

63. ***Third***, and relatedly, because of the Arbitral Tribunal's failure to rule on the proper procedure for appointment of replacement arbitrators, there was no legal basis for ITLOS President to proceed with the appointments. As explained above, the mechanism under UNCLOS, vesting him with powers to make the relevant appointments, was not triggered, and the Arbitral Tribunal did not establish any other procedure that would empower him to intervene. Therefore, ITLOS President had no legal power to make the appointments.

64. ***Fourth***, ITLOS President deprived the Russian Federation of a right to take part in in-person consultations, thus aggravating the procedure even further. While ITLOS President initially scheduled such consultations for 30 July 2024 in Hamburg, Germany, the Russian Federation informed him that participation in consultations held in States that had introduced sanctions against the Russian Federation would be accompanied by considerable logistical and visa-related difficulties.[33] Even though the alternative dates suggested by the Russian Federation – the week starting from 5 August 2024[34] – were not far removed from the initially suggested date, ITLOS President ignored the Russian Federation's suggestion and proceeded to schedule consultations by correspondence.[35]

65. In adopting that procedure of consultations by correspondence only, ITLOS President seems to have been driven by the intention to comply with the purported 30-day period for making an arbitrator appointment under Article 3(e), while in fact the said timeframe (even if applicable and relevant, which it was not) could be extended.[36]

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[32] *See*, e.g., Letter from the Agent of the Russian Federation to ITLOS President dated 10 July 2024.

[33] Letter from the Agent of the Russian Federation to ITLOS President dated 22 July 2024.

[34] Letter from the Agent of the Russian Federation to ITLOS President dated 27 July 2024.

[35] Letter from ITLOS President dated 27 July 2024.

[36] Indeed, as the Virginia Commentary observes, '…*it appears that the parties can always, by agreement, prolong those time limits [set forth in Article 3 of Annex VII] or, similarly, one party can agree to extend a time limit for the other party*'. *See* Myron H. Nordquist, et al. (eds.), United Nations Convention on the Law of the Sea: A Commentary (2014), ¶A.VII.8.

66. The purported 'consultations' held by correspondence, without holding an in-person meeting, were also at variance with all reported consultations held by ITLOS Presidents under Annex VII of UNCLOS where both parties were present.[37] That approach had also been followed in this arbitration on an earlier occasion,[38] but not this time when replacement appointments were to be made.

C. THE ARBITRAL TRIBUNAL'S TAINTED NEUTRALITY AND IMPARTIALITY

67. The said flawed procedure implemented by the Arbitral Tribunal and ITLOS President resulted in the purported appointment of Professor Joanna Mossop and Judge James Kateka. The former recused herself due to a conflict of interest, while the latter was challenged by the Russian Federation.

68. Professor Mossop's nomination is particularly notable, in that she proceeded to accept the appointment, but then chose to withdraw when she had to submit her Declaration of Acceptance and Statement of impartiality and independence with the Registry – after realising that she had supported a statement of the Australian and New Zealand Society of International Law condemning the Russian Federation's military operations in a manner similar to the IDI Declaration.[39] It is therefore evident that both ITLOS President and Professor Mossop were not acting diligently when making and accepting the appointment respectively, which further shows that the procedure was inappropriate.

69. Following Professor Mossop's withdrawal, ITLOS President once again proceeded to make an appointment, even though he likewise did not have the power to do so, and appointed Judge Kathy-Ann Brown from Jamaica. Despite having the opportunity to select from a wide range

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[37] United Nations Convention on the Law of the Sea: Meeting of States Parties, Annual Report of the International Tribunal for the Law of the Sea for 2010 No. SPLOS/222, 4 April 2011, ¶¶22-24, available at: https://pca-cpa.org/en/cases/229/; United Nations Convention on the Law of the Sea: Meeting of States Parties, Annual Report of the International Tribunal for the Law of the Sea for 2011 No. SPLOS/241, 9 April 2012, ¶¶38-40, available at: https://www.itlos.org/fileadmin/itlos/documents/annual_reports/annualreport_2011.pdf; United Nations Convention on the Law of the Sea: Meeting of States Parties, Annual Report of the International Tribunal for the Law of the Sea for 2013 No. SPLOS/267, 28 March 2014, ¶¶68-69, available at: https://www.itlos.org/fileadmin/itlos/documents/annual_reports/annual_report_2013.pdf;

[38] United Nations Convention on the Law of the Sea: Meeting of States Parties, Annual Report of the International Tribunal for the Law of the Sea for 2019 No. SPLOS/30/2, 31 March 2020, ¶¶85/86, available at: https://www.itlos.org/fileadmin/itlos/documents/annual_reports/Annual_Report_2019.pdf

[39] 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.

of candidates, and knowing the highly sensitive, politicized nature of the case, ITLOS President once again appointed an arbitrator from a nation with close ties to anti-Russian Western powers.

70. The Russian Federation's well-substantiated challenge to Judge Kateka was based on several grounds, including the existence of justifiable grounds for doubting his impartiality due to his opinion expressed in connection with the adoption of the Declaration of the Institute of International Law on Aggression in Ukraine dated 1 March 2022 (the "**Declaration**").[40] While support for strong open anti-Russian criticisms in the same Declaration had resulted in the disqualification of Professor McRae and Judge Wolfrum in 2024,[41] the Russian Federation was surprised to find out from the Tribunal's Decision on Challenge dated 11 April 2025 that the very same members of the Tribunal who had upheld the challenges on the earlier occasion, chose to take a diametrically opposite stance here.

71. In the Decision on Challenge, two members of the Tribunal held that Judge Kateka, '[u]nlike Judge Wolfrum and Professor McRae, […] abstained, consciously choosing not to cast a vote either in support of or against the Declaration' and, by doing so, 'distanced himself from the text of the Declaration and, as a result, cannot be held to have subscribed to the views expressed therein.'[42] However, the reality is that Judge Kateka had no reservations to most of the Declaration's text and only suggested some drafting changes (that were a matter of mere semantics), while clearly expressing acceptance of the rest of the document that accused the Russian Federation of 'unlawful use of force' (something Judge Kateka explicitly agreed with), 'disregard [of] the basic rules of the legal system that the international community has established', 'serious breach of obligations arising from peremptory norms of international law' and called for engagement of 'international responsibility for the Russian Federation'. What is more, in contrast with Professor McRae and Judge Wolfrum who simply blanketly endorsed the Declaration, Judge Kateka made specific comments to the final text, while at the same time speaking approvingly of it generally. As Professor Vylegzhanin stated in his Dissenting Opinion, such 'tacit acceptance by Judge Kateka of a manifestly one-sided approach to evaluating the complex situation between the Respondent and the Claimant in this case from the standpoint of international law is […] a justifiable ground for doubting his impartiality in this case.'[43]

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[40] Institute of International Law, Declaration of the Institute of International Law on Aggression in Ukraine dated 1 March 2022, available at: https://www.idi-iil.org/en/declaration-de-linstitut-de-droit-international-sur-lagression-en-ukraine/

[41] Decision on Challenges dated 6 March 2024.

[42] Decision on Challenges dated 6 March 2024, ¶88.

[43] Decision on Challenges dated 6 March 2024, Dissenting Opinion of Professor Alexander N. Vylegzhanin, ¶16.

72. Apart from that, the Russian Federation also referred to Judge Kateka's post on social media, where he re-tweeted (without any comments) a reposting of another social media statement referring to Russia's military operations in Ukraine as 'acts of aggression' and comparing them to colonialism in Africa.[44] Against, the majority of the Tribunal members determined that the reposting was consistent with Judge Kateka's account of 'his own practice to draw attention to matters of importance in the African continent' and did not question his impartiality.[45] However, on any reasonable interpretation, such an open and unqualified reposting of a biased statement can only be viewed as support for that statement in the first place. Indeed, as Professor Vylegzhanin stressed in his Dissenting Opinion, courts in many jurisdictions have upheld the view that it is common to view an unqualified reposting in similar circumstances as an endorsement of the original post.[46] Judge Kateka's unqualified reposting of content that accused the Russian Federation of 'aggression' against Ukraine and 'colonialism' was clearly indicative of severe political bias.

73. The majority's decision on the Russian Federation's challenge to Judge Kateka, which is plainly inconsistent with the Tribunal's own earlier decision and contrary to legal treatment of social media activity in many jurisdictions worldwide, could only aggravate the procedural irregularities in this case.

74. In addition to the procedural defects, the Russian Federation notes that despite the charged political climate and highly politicized nature of the dispute between the Parties, all six arbitrators appointed by ITLOS President are either nationals of Western or West-aligned states (Canada, Germany, Iceland, New Zealand and Jamaica), or personally supported manifestly anti-Russian political statements and declarations related to the conflict in Ukraine.

75. In light of the above, the Russian Federation is regrettably convinced that the Arbitral Tribunal, in its current irregular and apparently biased composition, will not be able to decide the dispute between the Parties in an impartial and independent manner.

D. THE ARBITRAL TRIBUNAL'S IMPROPER CONSTITUTION WHEN DECIDING ON THE RUSSIAN FEDERATION'S OBJECTION

76. The Arbitral Tribunal's Decision on the Objection to the Constitution of the Arbitral Tribunal dated 29 July 2025 was also adopted without following the proper procedure. Whilst the Russian Federation had specifically indicated that its objections shall be 'resolved by those three

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

[45] Decision on Challenges dated 6 March 2024, ¶95.

[46] Decision on Challenges dated 6 March 2024, Dissenting Opinion of Professor Alexander N. Vylegzhanin, ¶¶28-30.

members of the Tribunal whose standing as arbitrators is unchallenged',[47] that request was ignored by the Arbitral Tribunal as it proceeded to decide on the objections as a tribunal of five members, including Judges Kateka and Brown, whose standing on the Arbitral Tribunal was under challenge, and who, in the Russian Federation's view, could not participate in the present matter. Also, Judge Brown was not among the Tribunal members to resolve the Russian Federation's challenge to Judge Kateka while the challenge to the Tribunal's constitution (including her appointment) was still unresolved.[48]

77. This led to an untenable situation where two arbitrators decided upon the legality of their own purported appointment. It is recalled that, when the standing of Judge Wolfrum and Professor McRae was under challenge, the unchallenged members of the Tribunal decided that Professor McRae and Judge Wolfrum would not take part in any deliberations of the Arbitral Tribunal pending a decision on the Challenges[49]; however, this was not the case with Judges Brown and Kateka, who were allowed full standing when deciding on the matter of the legality of their appointment.

78. These circumstances compounded the improper composition of the Arbitral Tribunal in the present case, in clear conflict with the Rules of Procedure and Annex VII of UNCLOS. Following the Arbitral Tribunal's disregard of such fundamental flaws in its recent decision on the Russian Federation's objection, these defects have become uncurable.

E. THE ARBITRAL TRIBUNAL'S SELECTIVE AND UNTIMELY PUBLICATION OF THE PARTIES' SUBMISSIONS, AND UNEQUAL TREATMENT OF THE PARTIES

79. The Arbitral Tribunal's recent arbitrary approach to the publication of the Parties' submissions in this case further evidences the procedural disintegrity and unequal treatment of the Parties in these proceedings. Indeed, the Arbitral Tribunal authorised a selective publication by the Registry of a heavily redacted version of the submissions of the Russian Federation that concerned the Arbitral Tribunal's flawed constitution,[50] while at the same time applying no redactions whatsoever to Ukraine's requisite submissions[51] and prematurely publishing those in full even before the Russian Federation's objections were resolved, in contravention of Article 28 of the Rules of Procedure. No explanation was ever tendered as to any rationale for that disparate treatment of

[47] Letter from the Agent of the Russian Federation dated 6 December 2024.
[48] Decision on Challenge dated 11 April 2025, ¶39.
[49] Decision on Challenges dated 6 March 2024, ¶38.
[50] Letter from the Agent of the Russian Federation dated 6 December 2024.
[51] Letter from the Agent of Ukraine dated 20 December 2024.

the Parties, or the source of the redactions made to the Russian Federation's letter. Such a breach of the requisite confidentiality of the proceedings was impossible to remediate as it was widely reported in specialised platforms and general social media.

F. CONCLUSION

80. The Russian Federation reiterates its strong commitment to UNCLOS, and it is in that spirit that it consented to the dispute settlement mechanisms envisaged by the Convention. However, as indicated above, such consent is predicated on the expectation that the fundamental rules of procedure agreed upon by the States Parties to the Convention, including those relating to the composition of arbitral tribunals and which guarantee the appointment of independent and impartial arbitrators, will be respected.

81. The improper constitution of the Arbitral Tribunal and apparent bias of some of its members, compounded with other significant procedural violations, has severely undermined due process and the integrity of the proceedings and raises serious concerns as to the ability of the Arbitral Tribunal to consider and resolve this dispute in a neutral and impartial manner. The Russian Federation cannot take part in good conscience in such a flawed process where principles of fairness and justice are disregarded.

82. It is for the above reasons that, as indicated earlier in this letter, and with deep regret, the Russian Federation feels compelled to withdraw from the proceedings and, in light of the circumstances, must consider any procedural order or award that may be issued by this Tribunal as null and void.

83. The Russian Federation respectfully requests that this information be conveyed to the Agent of Ukraine and the members of the Arbitral Tribunal. The Russian Federation also requests an expeditious publication of the present letter on the Registry's website alongside the submissions of the Parties on the present issue.

Sincerely,

Gennady KUZMIN

Agent of the Russian Federation