

DECLARATION

I am in full agreement with the Award on matters of jurisdiction and the merits. I would, however, have preferred a different approach with regard to the decision on costs, as the Claimant prevailed on jurisdiction and the Respondent on the merits, which were more costly to litigate and significant in consequence.

As to the costs of the Tribunal and ICSID, it would be appropriate for the Claimant to bear 75% of the costs, and the Respondent to bear 25%.

As to the legal fees and other costs of the Parties, it would be appropriate for the Respondent to pay 25% of Claimant's costs, and for the Claimant to pay 75% of the Respondent costs.

Taken together, this would lead to a result in which the Claimant would be ordered to make a modest payment in favour of the Respondent. The conclusion that has been adopted, namely that the Respondent should have been ordered to make a payment to the Claimant, however modest in amount, strikes me as counter-intuitive and contrary to a broad principle that, all other points being equal, the award of costs should generally follow the outcome of the case.

Philippe Sands

[Signed]

Date: 23 February 2024