



Egypt Supplementary Comments to the Disqualification Proposal of Prof. Brigitti Stern

In accordance with the calendar set by ICSID via the correspondence of 13 December 2019, Respondent hereby provides its further observations in respect of Claimants' Disqualification Proposal and Professor Stern's explanations.

Prof. Stern's response cleared the air regarding Claimants' disqualification proposal. Her response clarified the lack of standing for each of the three grounds for the disqualification proposal.

Claimants' disqualification is profoundly a tactical proposal, as it relied heavily on speculations rather than serious grounds. For instance, Claimants stressed that Prof. Stern's alleged law boutique serves sovereign States.¹ However, Prof. Stern furnished that she has no business enterprise holding its name.²

Relatively, Claimants connected the reference to Prof. Stern as "an international law expert" to conclude that Prof. Stern serves, via her claimed law boutique, sovereign States.³ Yet, Prof. Stern underlined that she does not advise States as an expert.⁴

Then, Claimants, hopelessly, tried connecting the dots between the University where Prof. Stern used to work as a professor and its remote branch in Cairo.⁵ Here again, Prof. Stern underlines that she retired from the University of Paris 1 Pantheon-Sorbonne ten years ago, not to mention her surprise of any potential connection whereby Claimants try to substantiate between her ex-employer and its remote branch in Cairo.

Subsequently, Claimants mentioned that Prof. Stern is a Member of the Scientific Board of the Centre René-Jean Dupuy for law and development, University of Alexandria.⁶ In fact, Prof. Stern explained that she has no connection with the Alexandria library, and the said Centre, based on her internet search, is not a subsidiary of the Alexandria library.⁷ Her response, further, impliedly reflected the inaccuracy of Claimants' contrived allegations.

¹ Disqualification Proposal, 8, 9.

² Prof. Stern Explanations to the Disqualification Proposal, 7.

³ Disqualification Proposal. [1]

⁴ Prof. Stern Explanations. [2]

⁵ Disqualification Proposal, 2, 9, 10. [1]

⁶ Disqualification Proposal, 2, 10. [1]

⁷ Prof. Stern Explanations, 8, 9. [2]

Next, Claimants expressed, more than once, their concern regarding the reference to Prof. Stern as an expert of public international law.⁸ Further, States' appointments of Prof. Stern developed their concern. It is commonly understood that the rationale of each disputing party's appointment of an arbitrator in the tribunal is to choose a person who that party believes to have a clear understanding of its culture and position.⁹ It is the *raison d'être* for the party autonomy in international arbitration generally.¹⁰ As rightly stated by Prof. Stern, '*... a professor of international law might better understand the functioning of a State...*'.¹¹ It would be irrational to understand the party's right to appoint an arbitrator to mean otherwise. Certainly, '[I]t would be strange indeed if an interested party, with the right to select an arbitrator, would select one antagonistic to it'.¹² Respondent understands that each appointing party chooses an arbitrator which, depending on the appointed arbitrator's background, it believes has a correct consideration of the factual background of the case, and the likelihood of being involved in a comparable dispute before.

Claimants failed to rationalize their random inquiries, not to mention the irrelevance thereof to the independence and impartiality of Prof. Stern. Furthermore, it was shocking to see Claimants fabricating the existence of a law boutique holding Prof. Stern's name. Likewise, Claimants desperately assumed a tie between Prof. Stern and Egypt and its entities. They invoked the existence of appointments by Egyptian entities to Prof. Stern and her involvement in legal services with official entities.

Respondent, then, refers to Claimants' correspondence of the 27th of January 2020 where they asked for a decision on provisional measures. Surprisingly, Claimants treats Prof. Stern's disqualification as inevitable. Claimants ask for '*A determination that Egypt is not allowed to appoint a replacement for Ms. Stern.*',¹³ even the other members of the Tribunal have not made a decision in this regard yet.

Respondent takes this provisional measure request as a literal "gamesmanship". Claimants planned this provisional measure request to be filed shortly before the lapse of the schedule of ICSID for the disqualification proposal of Prof. Stern. They are fully aware that the Tribunal would NOT consider this provisional measure request until making a decision on the disqualification proposal. The timing of this provisional measure request does not come as a coincidence. Thereafter, Claimants ask that '*once the remaining members of the Tribunal resolve Claimants' pending challenge to Ms. Stern's appointment, Claimants request the following: (1)*

⁸ Disqualification Proposal, 8, 10. [1]

⁹ Johnson v. Jahncke Service, Inc., 147 So. 2d 247, 248 (La. Ct. App. 1962)

¹⁰ M. Scott Donahey, 'The Independence and Neutrality of Arbitrators', (1992) 9/4 Journal of International Arbitration, 39. <www.scottdonahey.com/wp-content/uploads/2015/03/IndependenceNeutralityOfArbitrators.pdf> accessed 25 January 2020.

¹¹ Prof. Stern Explanations, 10 [2]

¹² Catherine A. Rogers, 'Regulating International Arbitrators: A Functional Approach to Developing Standards of Conduct' (2005) 41 STAN. J INT'L L. 53, 56, 74. <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1235&context=fac_works> accessed on 25 January 2020; David J. Branson, 'American Party-Appointed Arbitrators-Not the Three Monkeys' (2004) 30/1 DAYTON L. REV. 51.

¹³ Claimants correspondence of the 27th of January 2020, 1.

*That Ms. Stern resign [sic] as an arbitrator;*¹⁴ Respondent takes the aforementioned relief as a substitute request addressed to Prof. Stern whereby Claimants ask Prof. Stern to step down from the Tribunal, should the Disqualification Proposal be dismissed. Respondent assumes that Claimants' substituent request, apparently, has been motivated by Prof. Stern's statement that "*I considered that this was not a good start for an effective and peaceful proceeding and I resigned...*".¹⁵ Technically, there is no such thing as a request to resign,¹⁶ only a disqualification proposal. Each arbitrator entertains, on his/her initiative, the discretion to step down from the arbitral tribunal.

Respondent emphasizes that Claimants submitted this Disqualification Proposal for strategic motives. It is a baseless request which lacks any sound reasoning. Thus, Respondent reserves the right to ask the Tribunal to consider Claimants' attitude when estimating the cost of the dispute.

Respectfully submitted,

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On behalf of Respondent



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¹⁴ Ibid, 5.

¹⁵ Prof. Stern Comment on the Disqualification Proposal of the 2nd of January 2020, 10,11.

¹⁶ Art. 56 of the ICSID Convention, and Rule 8(2) of the ICSID Arbitration Rules.