Ms. M Kinnear
Secretary-General,
ICSID
1818 H Street, N.W.
MSN J2-200
Washington DC 20433
USA

1 March 2017

Dear Secretary-General,

I have seen the circular notification from the Secretary to the Tribunal of a renewed challenge by the Claimant Parties to the appointment of my co-arbitrator, Mr VV Veeder, in the wake of the rejection by the Chairman of the Administrative Council of the earlier challenge to both Mr Veeder and me. The Secretary's letter indicates that, under the terms of Article 58 of the ICSID Convention and ICSID Arbitration Rule 9, the decision on this new challenge falls to be decided by Me. Mourre and myself, as the two remaining members of the Tribunal.

Notwithstanding the above, it does not seem to me right that I should sit on this challenge.

If I were to do so, any ruling I proceeded to make on the challenge would lay itself open to an accusation that I lacked the necessary objectivity and impartiality, either because I had just myself been under challenge by the same Parties, or because both the old and the new challenges implicate directly the relationship between members of the same Barristers' Chambers, as is the case with Mr Veeder and myself.

Furthermore, and perhaps more important still, the new challenge, based as it is on the same ground as the old challenge, is not dissimilar to an appeal against the rejection of the latter.

For all of the above reasons, it would be more conducive to the health of the arbitration system under the Convention and the Rules if the new challenge, like the old, were to be heard and decided by the Chairman of the Administrative Council. That would not, in my view, be in any sense incompatible with the provisions of the Convention and the Rules, taken in their entirety.

24 Lincoln's Inn Fields London WC2A 3EG UK
T +44 (0)20 7813 8000 F +44 (0)20 7813 8080
DX 320 Chancery Lane E clerksroom@essexcourt.com
www.essexcourt.com

Since writing the above, I have seen a copy of the further letter from counsel for the Claimant Parties, dated 24 February 2017. While I do not accept the argument as to an 'objective conflict of interests,' the letter serves nevertheless to reinforce my view that the only acceptable solution is for the new challenge to Mr Veeder to be decided by the Chairman of the Administrative Council.

Please feel at liberty to circulate the terms of this letter as you think fit.