INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

RAIFFEISEN BANK INTERNATIONAL AG AND RAIFFEISENBANK AUSTRIA D.D.

Claimants

and

REPUBLIC OF CROATIA

Respondent

ICSID Case No. ARB/17/34

DECISION ON THE PROPOSAL TO DISQUALIFY STANIMIR ALEXANDROV

Chairman of the Administrative Council
Dr. Jim Yong Kim

Secretary of the Tribunal
Mr. Alex B. Kaplan

Date: May 17, 2018

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I. PROCEDURAL HISTORY

1. On September 1, 2017, Raiffeisen Bank International AG and Raiffeisenbank Austria d.d. ("Claimants") submitted a Request for Arbitration to the International Centre for Settlement of Investment Disputes ("ICSID" or the "Centre") against the Republic of Croatia ("Croatia" or "Respondent").

2. On September 15, 2017, the Secretary-General of ICSID registered the Request for Arbitration pursuant to Article 36(3) of the Convention on the Settlement of Investment Disputes between States and Nationals of other States ("ICSID Convention").

3. The Tribunal is composed of Professor Lucy Reed, a national of the United States of America, President, appointed by the agreement of the Parties; Dr. Stanimir Alexandrov, a national of the Republic of Bulgaria, appointed by the Claimants; and Mr. Lazar Tomov, a national of the Republic of Bulgaria, appointed by the Respondent.

4. On February 15, 2018, the Secretary-General notified the parties that all three arbitrators had accepted their appointments and that the Tribunal was therefore deemed to have been constituted on that date in accordance with Rule 6(1) of the ICSID Rules of Procedure for Arbitration Proceedings ("ICSID Arbitration Rules"). Mr. Alex B. Kaplan, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal.

5. On February 28, 2018, the Respondent proposed the disqualification of Dr. Stanimir Alexandrov, in accordance with Article 57 of the ICSID Convention and ICSID Arbitration Rule 9 (the "Proposal"). On that date, the Centre informed the parties that the proceeding will be suspended until the Proposal is decided, pursuant to ICSID Arbitration Rule 9(6).

6. The Parties were also informed that the Proposal will be decided by the other Members of the Tribunal in accordance with Article 58 of the ICSID Convention and ICSID Arbitration Rule 9(4).

7. A procedural calendar was established for the Parties' submissions on the Proposal. In compliance with that procedural calendar, the Claimants submitted their Response on the Claimant's proposal to disqualify Dr. Alexandrov on March 8, 2018 (the "Response").

8. On March 12, 2018, ICSID informed the Parties that Dr. Alexandrov will not be submitting observations on the Parties' submissions to date related to the Respondent's Proposal and that, in accordance with the procedural calendar established for the Proposal, the Parties may file any further observations related to the Proposal.

9. On March 21, 2018, the Respondent filed Further Observations to the Claimants' Response of March 8, 2018 (the "Further Observations"), and the Claimants sent email correspondence to the Secretariat indicating that they have no further observations on the Proposal.

10. By letter of April 6, 2018, Mr. Lazar Tomov informed the Centre that, for reasons explained in his letter, he could not decide the Proposal, recusing himself. A copy of Mr. Tomov's letter was transmitted to the Parties on that same date indicating that the proposal would be decided by the Chairman of the ICSID Administrative Council (the "Chairman"). No comments were received from the Parties on this issue.

II. PARTIES' ARGUMENTS

A. THE RESPONDENT'S PROPOSAL

(1) The Relevant Legal Standard

11. According to the Respondent, Articles 14 and 57 of the ICSID Convention regulate the disqualification of arbitrators in ICSID proceedings. Article 57 of the ICSID Convention establishes the right of a party to propose the disqualification of any member of a tribunal on the basis of "any fact indicating a manifest lack of the qualities required by" Article 14(1) of the ICSID Convention. Article 14(1) of the ICSID Convention, which states that a tribunal member must possess high moral character and have recognized competence in the fields

of law, commerce, industry or finance, has been widely interpreted as encompassing the requirement that members of tribunals need to be both independent and impartial.[1]

12. Respondent has interpreted ICSID jurisprudence in the following way. "Impartiality refers to the absence of bias or a predisposition towards one party" and "independence relates to the absence of external control, in particular of relations with a party that might influence an arbitrator's decision." In this regard, independence and impartiality "protect parties against arbitrators being influenced by factors other than those related to the merits of the case."[2]

13. Further, the Respondent argues that the applicable legal standard for disqualification in ICSID proceedings is "an objective standard based on a reasonable evaluation of evidence by a third party." The term "manifest" in Article 57 of the ICSID Convention means "evident" or "obvious" in that it "relates to the ease with which the alleged lack of [independence and impartiality] can be perceived."[3]

14. As a result, the Respondent states that Article 57 of the ICSID Convention requires that an arbitrator be disqualified where a reasonably informed third party would conclude that there are justifiable doubts (not certainties or even likelihoods, but doubts) about the challenged tribunal member's ability to exercise independent and impartial judgment or that there is an appearance (not certainty or even likelihood but appearance) of dependency or bias arising from the circumstances of a given case.[4]

15. In addition, the Respondent notes that numerous ICSID tribunals have referred to the IBA Guidelines on Conflicts of Interest in International Arbitration ("IBA Guidelines"). The IBA Guidelines are regarded as "instructive" and "useful references."[5]

[1] Proposal para. 16.

[2] Proposal para. 17.

[3] Proposal para. 18.

[4] Proposal para. 19.

[5] Proposal paras. 20-22.

(2) Dr. Alexandrov's Repeat Appointments in Cases against Croatia Establish an Absence of Impartiality and Independence

16. The Respondent asserts that Dr. Alexandrov has served as claimant's appointee in 35 cases out of the total 38 known investment treaty arbitrations in which he has sat as an arbitrator. He was the president of the tribunal in two cases, both of which were decided in favor of the claimants, and he was appointed once by a respondent more than a decade ago.[6]

17. Other claimants (and not the Claimants in this case) have appointed Dr. Alexandrov in four ongoing investment treaty arbitrations against Croatia in addition to this proceeding. They are:

- *Georg Gavrilović and Gavrilović d.o.o. v. Republic of Croatia* (ICSID Case No. ARB/12/39) ("*Gavrilović*");
- *B3 Croatian Courier Coöperatief U.A. v. Republic of Croatia* (ICSID Case No. ARB/15/5);
- *Amlyn Holding B.V. v. Republic of Croatia* (ICSID Case No. ARB/16/28); and
- *Addiko Bank AG and Addiko Bank d.d. v. Republic of Croatia* (ICSID Case No ARB/17/37) ("*Addiko*" or "*Addiko v. Croatia*").[7]

18. The Respondent indicated that Dr. Alexandrov declined to accept the appointment in *Addiko*. In doing so, he included a message to be transmitted to the Parties via ICSID that expressly disavowed the concerns raised by the Respondent related to multiple appointments against Croatia prior to ICSID seeking his appointment in that case. Thus, in

[6] Proposal paras. 35, 48.

[7] Proposal para. 27.

the Respondent's view, even though Dr. Alexandrov declined the appointment, he indicated his willingness to sit as an arbitrator in future ICSID cases against Croatia.[8]

19. According to the Respondent, Croatia has faced ten ICSID arbitrations to date, nine of which are pending. Dr. Alexandrov has been nominated by the claimants in half of these cases, and he is presently acting as the claimant-appointed arbitrator in 45 percent of the ongoing ICSID claims. As a result, the Respondent contends that Dr. Alexandrov possesses significant and unique influence over the Respondent's financial situation and international reputation which no single arbitrator should possess. Further, the Respondent argues that where an arbitrator is repeatedly appointed by claimants in cases against the same respondent, the arbitrator is highly likely to be negatively predisposed against that respondent's arguments or incentivized to be so predisposed – even subconsciously – in order to secure further appointments by claimants.[9]

20. In addition, the Respondent argues that Dr. Alexandrov's repeat appointments in cases against Croatia is concerning in light of his changed professional circumstances. Dr. Alexandrov left the partnership of Sidley Austin LLP to become an independent arbitrator in September 2017. As a result, in the Respondent's view, Dr. Alexandrov's income is dependent on his own revenue generation and the main source of that revenue is arbitral appointments by claimants in investment treaty arbitrations.[10]

21. The Respondent states that repeat appointments, such as the ones described above, "lead to the conclusion that it is manifest that the arbitrator cannot be relied upon to exercise independent judgment as required by the Convention." The criteria for deciding whether repeat appointments pose a threat to the arbitrator's impartiality and independence are qualitative rather than quantitative. In essence, the assessment of the risk underlying repeat appointments does not translate into a mere computation of how many such

[8] Proposal para. 28.

[9] Proposal paras. 30-32.

[10] Proposal para. 35.

appointments have taken place over a specified number of years. Rather, it entails a much broader analysis of the overall circumstances of a challenged arbitrator's profile.[11]

22. Moreover, the Respondent believes that the problem with repeat appointments rests in the fact that "the prospect of continued and regular appointment, with the attendant financial benefits, might create a relationship of dependence or otherwise influence the arbitrator's judgment." The risk is particularly heightened where repeat appointments represent a major source of the arbitrator's income, thus implying financial dependence, as is the case with Dr. Alexandrov.[12]

23. In addition, the Respondent asserts that serial appointments of the same arbitrator by different claimants in cases against the same respondent party can be likened to multiple appointments of an arbitrator by a claimant or its counsel under Section 3.1.3 of the IBA Guidelines. Section 3.1.3 provides that an arbitrator falls within the Orange List if he or she has "within the past three years, been appointed as arbitrator on two or more occasions by one of the parties."[13]

24. Thus, the Respondent concludes that Dr. Alexandrov is, put simply, already perceived as a professional anti-Croatia claimant arbitrator.[14]

(3) Consideration of the Same Legal Issue in Multiple Arbitrations Establish an Absence of Impartiality and Independence

25. The Respondent states that one of the disputes in which Dr. Alexandrov is sitting, *Gavrilović*, is similar to the present proceeding in that it is also based on the Austria-Croatia BIT. Although that arbitration is significantly more advanced than the present proceeding, it is likely that arguments relating to the compatibility of Austria-Croatia BIT with the law

[11] Proposal para. 47.

[12] Proposal para. 48.

[13] Proposal para. 49.

[14] Proposal para. 49.

of the European Union will be central to both the present arbitration and the *Gavrilović* proceeding.[15]

26. In the Respondent's view, this means that when the issue is put before the Tribunal in the present case, Dr. Alexandrov will already have been privy to third party and tribunal members' views. Further, he will already have formed his own views and taken decisions on the issue in *Gavrilović* before having the opportunity to hear the Parties' views in the instant case.[16]

27. According to the Respondent, participation in related or similar investment treaty arbitrations "is an important consideration in the assessment of [an arbitrator's] perceived impartiality" since the arbitrator will likely have "obtained documents or information in one arbitration that are relevant to the dispute to be determined in another arbitration." As a result, Dr. Alexandrov's "objectivity and open-mindedness with regard to the facts and issues to be decided in the present arbitration are tainted."[17]

28. The Respondent further notes that this problem is highlighted in Section 3.1.5 of the IBA Guidelines. Specifically, Section 3.1.5 provides that an arbitrator falls in the Orange list if he or she "currently serves, or has served within the past three years, as arbitrator in an arbitration on a related issue involving one of the parties or an affiliate of the parties."[18]

(4) Dr. Alexandrov's History of Appointments with Claimants' Counsel Establish an Absence of Impartiality and Independence

29. According to the Respondent, Dr. Alexandrov and the Claimants' counsel, WilmerHale, have developed a special relationship as the record of appointments between them is extensive.[19] The Respondent uses the term "cross-appointments" to refer to

[15] Proposal para. 51.

[16] Proposal para. 34.

[17] Proposal para. 51.

[18] Proposal para. 51.

[19] Proposal para. 38.

appointments of Dr. Alexandrov as arbitrator by WilmerHale and appointments of Mr. Gary Born, a partner at WilmerHale, as arbitrator, by Dr. Alexandrov, as counsel.

30. In addition to WilmerHale's appointment of Dr. Alexandrov in the instant case, the cross-appointments at issue are as follows:

- Dr. Alexandrov is co-counsel with Sidley Austin LLP in a commercial case where Mr. Gary Born, partner at WilmerHale and counsel to the Claimants, serves as the arbitrator appointed by Dr. Alexandrov's client.

- Dr. Alexandrov was appointed by WilmerHale as the claimant's co-arbitrator in *J&P-AVAX S.A. v. Lebanese Republic* (ICSID Case No. ARB/16/29).

- Mr. Gary Born was appointed as an arbitrator in *Philip Morris Brand Sàrl (Switzerland), Philip Morris Products S.A. (Switzerland) and Abal Hermanos S.A. (Uruguay) v. Oriental Republic of Uruguay* (ICSID Case No. ARB/10/7). Though the respondent prevailed in that case, Mr. Born issued a dissenting opinion in favor of the claimants.

- WilmerHale nominated Dr. Alexandrov as the claimant's arbitrator in *Addiko*.

- WilmerHale appointed Dr. Alexandrov as the claimant's arbitrator in an investment treaty arbitration *GRAND EXPRESS Non-Public Joint Stock Company v. Republic of Belarus* (ICSID Case No. ARB(AF)/18/1) ("*Grand Express*"). Dr. Alexandrov did not disclose the appointment in this case.[20]

31. The Respondent states that these cross-appointments clearly point to an ongoing and consistent professional relationship between Dr. Alexandrov and counsel for the Claimants in this case that is inappropriate. As a result of this ongoing relationship, Dr. Alexandrov will be motivated – consciously or unconsciously – to prejudge the present case in a

[20] Proposal paras. 39-40.

manner favorable to the Claimants and WilmerHale. Such doubts give rise to an appearance of dependence or bias.[21]

(5) Dr. Alexandrov's Relationship with The Brattle Group Establish an Absence of Impartiality and Independence

32. The Respondent believes that Dr. Alexandrov also lacks impartial judgment against the Respondent because The Brattle Group, a firm of financial consultants, is involved in at least one of the current investment treaty cases against the Respondent arising out of its financial sector. The claimants in *UniCredit Bank Austria AG and Zagrebačka Banka d.d. v. Republic of Croatia* (ICSID Case No. ARB/16/31) ("*UniCredit*" or "*Unicredit v. Croatia*"), an arbitration also brought under the Austria-Croatia BIT and relating to the same facts as the present case, have retained The Brattle Group as experts according to information in the public domain.[22]

33. According to the Respondent, Dr. Alexandrov has a long-standing and publicly-recognized relationship with The Brattle Group, as he has retained their services to deliver expert testimony in multiple treaty arbitrations while working as a partner at Sidley Austin LLP.[23]

34. As a result, the Respondent argues that Dr. Alexandrov will be predisposed toward arguments and evidence put forward by the Claimants, knowing that The Brattle Group has recently given expert evidence on behalf of claimants in respect of an arbitration under the same BIT with an identical factual basis.[24]

35. Further, the Respondent notes it is not the first party to an investment arbitration to comment on the impropriety of Dr. Alexandrov's long-standing relationship with The Brattle Group. His independence and impartiality were also questioned in three prior cases on the basis of his relationship with The Brattle Group. They are:

[21] Proposal para. 41.

[22] Proposal para. 42.

[23] Proposal para. 43.

[24] Proposal para. 43.

- *SolEs Badajoz GmbH v. Kingdom of Spain* (ICSID Case No. ARB/15/38), in which Dr. Alexandrov resigned. According to the Respondent, this resignation is a clear indication of the legitimacy of its concerns about Dr. Alexandrov's ongoing use of The Brattle Group in two cases in which he acted as counsel and his 15-year relationship with The Brattle Group;

- *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan* (ICSID Case No. ARB 12/1) in which the respondent twice proposed Dr. Alexandrov's disqualification due to the claimant's engagement of The Brattle Group; and

- *Eiser Infrastructure Limited and Energia Solar Luxembourg S.à.r.l. v. Kingdom of Spain* (ICSID Case No. ARB/13/36), in which Dr. Alexandrov's failure to disclose his relationship with The Brattle Group is raised as a ground for annulment of that award.[25]

36. In conclusion, the Respondent argues that viewed together and independently, the facts set out above demonstrate that the Respondent has met the legal standard for the disqualification of Dr. Alexandrov in this case.[26]

B. THE CLAIMANTS' RESPONSE

(1) Respondent Has Artificially Lowered the Relevant Standard

37. The Claimants agree with the Respondent that Article 14(1) of the ICSID Convention requires both independence and impartiality. The Claimants also agree that the standard for disqualification under Article 57 is "an objective standard based on a reasonable evaluation of evidence by a third party." However, the Respondent has failed to properly appreciate the import of the requirement that any lack of independence or impartiality be "manifest." The Respondent's own legal authorities make clear that the correct standard is significantly higher. Contrary to the Respondent's position, mere doubts or an

[25] Proposal para. 44.

[26] Proposal para. 53.

appearance of bias are insufficient to satisfy the test under Article 57 of a "*manifest*" lack of independence.[27]

38. The Claimants refer to the decision in *OPIC*, an authority also relied on by the Respondent, wherein the unchallenged arbitrators cautioned that there

> *exists a relatively high burden for those seeking to challenge ICSID arbitrators. The Convention's requirement that the lack of independence be "manifest" necessitates that this lack be clearly and objectively established. Accordingly, it is not sufficient to show an appearance of a lack of impartiality and independence.*[28]

39. The Claimants state that respected commentators have equally underlined the heavy burden a party must satisfy to disqualify an arbitrator under Article 57. As such, to succeed on its challenge, the Respondent must establish facts that make it "obvious and highly probable" that Dr. Alexandrov cannot be relied upon to exercise independent and impartial judgment in this case. Although the Claimants agree that sources such as the IBA Guidelines on Conflicts of Interest in International Arbitration may be useful as part of this analysis, they cannot change the underlying legal standard required by the ICSID Convention.[29]

(2) The Multiple Appointments at Issue Do Not Establish an Absence of Impartiality or Independence

a. The Proposal's Factual Premise of an Unduly Claimant-Friendly Arbitrator Is Flawed

40. The Respondent attempts to imply a lack of impartiality and independence by noting, *inter alia*, the number of cases in which Dr. Alexandrov has been appointed by Claimants. Yet the Respondent asserts elsewhere in its Proposal that "[t]he criteria for deciding whether repeat appointments pose a threat to the arbitrator's impartiality and independence are

[27] Response paras. 3-5.

[28] Response para. 6 (citing *OPIC Karimum Corp. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/10/14), Decision on the Proposal to Disqualify Professor Philippe Sands (May 5, 2011), at para. 45) ("*OPIC*").

[29] Response para. 8.

qualitative rather than quantitative." As such, the Respondent's reference to a number of appointments by other claimants is the sort of speculation tribunals have routinely rejected in the context of challenges.[30]

41. According to the Claimants, it is a fact of the investment arbitration system that some arbitrators accept more appointments from claimants, others from respondent States, and yet others as presiding arbitrator. This is reflected in the Respondent's own appointment practice. The Respondent has appointed Professor Brigitte Stern in several of its pending ICSID cases. According to her ICSID CV, Professor Stern has sat as a respondent's co-arbitrator 55 times, presiding or sole arbitrator only three times, and as a claimant's co-arbitrator just once – in a case filed in 2004. Christopher Thomas (also appointed by Croatia) has never sat in an ICSID arbitration other than as a respondent's co-arbitrator, which he has done 18 times. The Respondent had no hesitation to appoint these eminent arbitrators in several cases, which reveals its present complaint is frivolous.[31]

42. In addition, the Claimants assert that the Respondent seeks to infer that Dr. Alexandrov's recent decision to become a sole practitioner demonstrates an inappropriate disposition towards investors. The Respondent asserts that Dr. Alexandrov "is now entirely and directly financially dependent on his own revenue generation and … the main source of his income derives from sitting as claimant-appointed co-arbitrator in investment treaty arbitrations."[32]

43. The Claimants reply that the Respondent has failed to identify any particular respect in which Dr. Alexandrov's impartiality or independence in this case would be affected by virtue of the fact that he now works solely as an arbitrator in a multitude of entirely unrelated matters. Indeed, in addition to this case, Dr. Alexandrov is currently sitting as arbitrator in 20 pending ICSID cases, having been appointed by various counsel against a variety of respondents, not including arbitrations under other arbitral rules. If anything,

[30] Response para. 12.

[31] Response para. 14.

[32] Response para. 15.

this compels the opposite inference: because Dr. Alexandrov has been appointed in a wide range of matters involving a multitude of parties and sectors, he is not dependent on any single case or matter. This only underscores his ability to exercise free and independent judgment.[33]

b. The Factual Premise of an "Anti-Croatia" Arbitrator Is Equally Flawed

44. The Respondent notes that Dr. Alexandrov has been appointed in four arbitrations involving Croatia and asserts that "a reasonably informed third party would conclude" that Dr. Alexandrov's appointment in four arbitrations against Croatia would appear to be "more than random coincidence." [34]

45. The Claimants agree that Dr. Alexandrov is currently sitting in three other ongoing investment arbitrations against Croatia (in addition to the present case). But in the Claimants' view, the other three cases have nothing to do with the present arbitration, or with each other: the factual basis for each claim is different. Indeed, the claimants in all four cases are different, and they are all represented by different counsel. In reality, Dr. Alexandrov appears to have been independently appointed by different parties and their lawyers in cases that happen to involve Croatia as a respondent. This is not surprising given Dr. Alexandrov's unique background as a renowned investment law specialist with personal roots in the CEE region. Thus, Dr. Alexandrov also sits, or has recently sat, in cases involving Hungary, Romania, the Czech Republic, and Serbia.[35]

46. In the absence of any real factual concern, the Respondent speculates that "[w]here an arbitrator is repeatedly appointed by claimants against the same respondent, that arbitrator is highly likely to be negatively predisposed against that respondent's arguments or incentivized to be so predisposed – even subconsciously – in order to secure further appointments by claimants." As discussed above, it is the Claimants' position that the

[33] Response para. 16.

[34] Response para. 17.

[35] Response para. 18.

speculative postulation of some likelihood of bias is insufficient to satisfy the test of a manifest lack of impartiality or independence.[36]

47. With all four cases still pending, the Claimants argue that there is in any event no basis to suggest that Dr. Alexandrov has a consistent history of deciding against Croatia. And the Respondent's theory that Dr. Alexandrov seeks to build an "anti- Croatia" "cottage industry" is belied by the fact that Dr. Alexandrov recently declined his nomination in the *Addiko v. Croatia* matter.[37]

48. Finally, the Claimants argue that the Respondent's complaint about Dr. Alexandrov is also not credible in light of Croatia's own appointment practice. As mentioned above, Croatia, as respondent, appointed Professor Stern as its co-arbitrator in at least four ongoing investment arbitrations. Apparently, the Respondent is content to have the same arbitrator sit in "45 percent of the ongoing ICSID arbitrations against the Respondent" as long as it is an arbitrator of the Respondent's own choosing.[38]

(3) Consideration of the Same Legal Issue in Multiple Arbitrations Does Not Establish an Absence of Impartiality or Independence

49. The Respondent complains that Dr. Alexandrov is also sitting in *Gavrilović*, in which "it is highly likely that … identical arguments relating to the compatibility of the intra-EU Austria-Croatia BIT with European Union ("EU") law will have been raised. This issue is one of those that are likely to be central to the present arbitration." The Claimants argue that the Respondent's own legal authorities, among others, undercut its position and make clear that consideration of the same legal issue in multiple arbitrations is not a sufficient basis for a challenge.[39]

50. First, in *Electrabel v. Hungary*, for example, the unchallenged tribunal members were tasked with determining whether Professor Stern should be disqualified due to the factual

[36] Response para. 19.

[37] Response para. 21.

[38] Response para. 22.

[39] Response para. 28.

and legal similarities that case and between *AES v. Hungary*[40] (to which she had previously been appointed). They rejected the challenge, explaining that "[i]nvestment and even commercial arbitration would become unworkable if an arbitrator were automatically disqualified on the ground only that he or she was exposed to similar legal or factual issues in concurrent or consecutive arbitrations."[41]

51. Second, the decision in *Caratube v. Kazakhstan*, on which the Respondent relies, is unavailing. There, the claimants challenged Kazakhstan's co-arbitrator, Mr. Bruno Boesch, on the basis that he had previously served in the same role in *Ruby Roz v. Kazakhstan*[42], an UNCITRAL arbitration that was brought by a company owned by the brother-in-law of the owner of Caratube. *Caratube* and *Ruby Roz* were therefore not connected by an abstract question of law, but by a significant overlap in the underlying factual matrix, involving the same government measures vis-à-vis two entities in the same group of companies.[43]

52. The unchallenged members of the *Caratube* tribunal upheld the challenge. In reaching their conclusion, the unchallenged tribunal members pointed to the close relation between the claimants in the two arbitrations and the fact that many of the same individuals who submitted witness statements in *Ruby Roz* were expected to submit witness statements in *Caratube*.[44]

53. Third, the Claimants note that the Respondent had no hesitation in appointing Mr. Miloš Olík in *UniCredit v. Croatia* and *Addiko v. Croatia* – even though both cases concerned the same government measure. Presumably the same legal issue regarding the validity of intra-EU BITs will also be raised in both arbitrations, which arise under the Austria-Croatia

[40] *AES Summit Generation Limited and AES-Tisza Erömü Kft. v. Hungary* (ICSID Case No. ARB/07/22) ("*AES v. Hungary*").

[41] Response para. 30 (citing *Electrabel S.A. v. Hungary*, (ICSID Case No. ARB/07/19), Decision on the Claimant's Proposal to Disqualify a Member of the Tribunal (February 25, 2008) ("*Electrabel v. Hungary*")).

[42] *Ruby Roz Agricol v. The Re public of Kazakhstan* ("*Ruby Roz*" or "*Ruby Roz v. Kazakhstan*"), UNCITRAL.

[43] Response para. 33 (citing *Caratube*).

[44] Response para. 34.

BIT, and where Volterra Fietta acts as counsel for the Respondent. The *UniCredit* case is significantly more advanced, as the ICSID website indicates that the Respondent has already filed its objections to jurisdiction in that case.[45]

54. Importantly, the unchallenged members of the *Caratube v. Kazakhstan* tribunal distinguished cases where any factual overlap is "of a general and impersonal character":

> *[T]here is a need immediately to stress that the situation where an arbitrator has possible prior knowledge of facts relevant to the outcome of the dispute must be carefully distinguished from the situation where an arbitrator has possible prior exposure to legal issues that would be equally relevant in that regard.*[46]

55. The same rationale applied in *İçkale*, where a challenge was rejected because the overlapping issue between the cases was a legal issue and there was no significant overlap of facts.[47]

56. In sum, the Claimants argue that a challenge based on multiple appointments can be sustained only when these multiple cases suffer from a significant overlap of facts that are specific to the merits and the parties involved. It is insufficient that a similar, or even the same, legal issue arises in two cases (which involves facts only of a general and impersonal character). Here, there is no factual overlap of the kind described in *Caratube*: this arbitration and *Gavrilović* concern different claimants; different measures; and entirely different sets of facts underlying the respective claims. That a similar legal issue may or may not arise in both cases does not establish a manifest lack of impartiality or independence.[48]

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[45] Response para. 39.

[46] Response para. 35 (quoting *Caratube*).

[47] Response para. 37 (citing *İçkale İnşaat Limited Şirketi v. Turkmenistan* (ICSID Case No. ARB/10/24), Decision on Claimant's Proposal to Disqualify Professor Philippe Sands (July 11, 2014) ("*İçkale*")).

[48] Response para. 38.

(4) The Purported History of Appointments Between Dr. Alexandrov and WilmerHale Does Not Establish an Absence of Impartiality or Independence

57. The Respondent's assertions that there is an "extensive" "history of reciprocal appointments" between Dr. Alexandrov and WilmerHale have no basis in reality. When acting as counsel, Dr. Alexandrov appointed Gary Born only twice. Two appointments, occurring over the course of eight years, hardly constitutes an extensive history of appointments. Other than the present case, Dr. Alexandrov has only been appointed twice by WilmerHale (and never before by the Claimants). None of these appointments rise to the level of requiring disclosure under the IBA Guidelines, nor do they fall afoul of the standard under Article 57.[49]

58. The Claimants believe that the Respondent tries to make much of the fact that Dr. Alexandrov "has chosen not to disclose" his recent appointment by the claimant in *Grand Express*, for whom WilmerHale acts as co-counsel. But there was no reason for Dr. Alexandrov to do so since at no time had Dr. Alexandrov been appointed in more than three arbitrations in the last three years by WilmerHale, which is the disclosure standard in the IBA Guidelines.[50]

59. In any event, the Claimant emphasizes that the only authority the Respondent cites for its argument of supposedly problematic "[c]ross-appointments" does not support its claim here. In *SGS*, the claimant challenged Christopher Thomas, Pakistan's co-arbitrator, on the basis that his firm was acting as counsel on behalf of Mexico in an ongoing investment arbitration presided over by Jan Paulsson, Pakistan's counsel in *SGS*. The unchallenged tribunal members rejected the challenge:

> *Such an inference is, so far as we can see, bereft of any basis in the facts of this proceeding; what we have here is simply a supposition, a speculation merely. It is commonplace knowledge that in the universe of international commercial arbitration, the community of active arbitrators and the community of active litigators are both small and that, not infrequently, the two communities may overlap,*

[49] Response paras. 40-41.

[50] Response para. 43.

> *sequentially if not simultaneously.* ***It is widely accepted that such overlap is not, by itself, sufficient ground for disqualifying an arbitrator****. Something more must be shown if a challenge is to succeed. In the instant case, that 'something more' has not been shown by the Claimant.*[51]

In the Claimants' view, this reasoning is directly applicable here.[52]

(5) The Engagement of the Brattle Group in the *UniCredit* Arbitration Does Not Establish an Absence of Impartiality or Independence

60. The Claimants argue that equally spurious are the Respondent's assertions that Dr. Alexandrov's ability to exercise independent judgment in this case is somehow impaired by UniCredit Bank Austria AG and Zagrebačka Banka d.d.'s decision to instruct The Brattle Group as their experts in *UniCredit v. Croatia*.[53]

61. Respondents in certain other investment arbitrations have challenged Dr. Alexandrov on the basis of his previous engagements of The Brattle Group when acting as counsel. To the best of the Claimants' knowledge, however, none of those challenges has been upheld. The mere existence of a challenge (much less an unsuccessful one) can hardly be used as objective evidence of Dr. Alexandrov's lack of impartiality or independence. In any event, the Claimants ague that it is non-sensical to suggest that the use of The Brattle Group by *different* claimants, represented by *different* counsel, in an arbitration in which Dr. Alexandrov is *not even serving as arbitrator* could have any impact on Dr. Alexandrov's ability to be impartial and independent in this arbitration. The Claimants can confirm, in any event, that they have no intention of instructing The Brattle Group as experts in this case.[54]

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[51] Response para. 44 (citing *SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan* (ICSID Case No. ARB/01/13), Decision on Claimant's Proposal to Disqualify Arbitrator (December 19, 2002) para. 26 (emphasis added) ("*SGS*" or "*SGS v. Pakistan*")).

[52] Response para. 45.

[53] Response para. 46.

[54] Response para. 47.

62. In conclusion, the Claimants argue that each of the Respondent's grounds for the disqualification of Dr. Alexandrov is baseless and that the cumulation of these grounds is not greater than its constituent parts. In the Claimants' view, the Respondent fares no better by combining its individually unpersuasive grounds for disqualification. The Claimants cite to *Electrabel v. Hungary* in which the unchallenged arbitrators stated, "Two or more factors which do not satisfy the test required under Article 57, cannot by mere 'combination' meet that test." A multiple of zero is still nil, and the Respondent's Proposal must be dismissed, and the Respondent should be ordered to reimburse the costs the Claimants incurred on a full indemnity basis.[55]

C. RESPONDENT'S FURTHER OBSERVATIONS

63. Respondent submitted further observations on its proposal following correspondence from ICSID communicating Dr. Alexandrov's decision not to submit observations on the proposal. In its further observations, the Respondent discussed the bases for its proposal and addressed three points which are discussed further below. They are (i) further comments on the relevant legal standard; (ii) the Claimants' supposed agreement with the facts underlying the proposal; and (iii) the Respondent's view on the effect of Dr. Alexandrov's decision not to submit observations on the proposal.

(1) Respondent Agrees that a Lack of Impartiality or Independence Must Be Manifest

64. Contrary to the Claimants' assertion, the Respondent has explicitly acknowledged that the relevant legal standard requires that the alleged lack of independence or impartiality be manifest, meaning "evident" or "obvious". The Respondent submits that its proposal meets this threshold particularly in this instance where the Claimants and Dr. Alexandrov do not refute its factual basis.[56]

[55] Response para. 48.

[56] Further Observations para. 5.

65. Further, the facts put forward by the Respondent must be considered as a whole, and it would be illogical and deceptive to consider each fact supporting the Respondent's proposal in isolation.[57]

66. According to the Respondent, the Claimants themselves rely on multiple legal authorities which support the view that all facts must be considered as a whole, when assessing whether a member of a tribunal can exercise independent and impartial judgment. By way of example, in *Tidewater* and in *Alpha Projektholding*, the unchallenged tribunal members took a holistic approach to the facts submitted in support of the Disqualification Proposal. The other tribunal members in these cases noted that a particular factual assertion should be viewed "in combination with other factors" and that certain factors can be "sufficient in conjunction with [other] facts or circumstances to tip the balance" in favor of disqualification.[58]

(2) Neither the Claimants nor Dr. Alexandrov Deny the Facts Underlying Respondent's Proposal

67. The Respondent further argues that the Claimants do not challenge the accuracy of the factual evidence underlying the Respondent's proposal, because they cannot.[59] According to the Respondent, there is no factual dispute with the Claimants on the following:

68. First, the Claimants do not dispute that Dr. Alexandrov has been repeatedly appointed by claimants in investment treaty arbitrations. In particular, the Respondent highlighted that Dr. Alexandrov has served as claimant-appointed co-arbitrator in "[36] cases out of the

[57] Further Observations para. 9.

[58] Further Observations para. 11 (citing *Tidewater Investment SRL and Tidewater Caribe, C.A. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/10/5), Decision on Claimants' Proposal to Disqualify Professor Brigitte Stern, Arbitrator (December 23, 2010) ("*Tidewater*"); *Alpha Projektholding GmbH v. Ukraine* (ICSID Case No. ARB/07/16), Decision on Respondent's Proposal to Disqualify Arbitrator Dr. Yoram Turbowicz (March 19, 2010) ("*Alpha Projektholding*")).

[59] Further Observations para. 17.

total [39] known investment treaty arbitrations in which he sat as an arbitrator." The Claimants do not challenge this statement. [60]

69. Second, the Claimants do not dispute that Dr. Alexandrov has been repeatedly appointed in investment treaty arbitrations against the Republic of Croatia. In its Disqualification Proposal, the Respondent confirmed that Dr. Alexandrov had been nominated in five out of ten investment treaty arbitrations against the Respondent as the claimants' co-arbitrator.[61]

70. Third, the Claimants do not dispute that there have been extensive cross-appointments between WilmerHale and Dr. Alexandrov. In this regard, the Claimants acknowledge that Dr. Alexandrov has appointed Gary Born on two occasions and that WilmerHale has nominated Dr. Alexandrov on four occasions.[62]

71. Fourth, the Claimants do not dispute that Dr. Alexandrov has recently been nominated in a fourth case by WilmerHale in *Grand Express.* In addition, the Claimants do not deny that Dr. Alexandrov failed to disclose this new appointment to the Tribunal and the Parties despite his clear obligation to do so.[63]

72. Last, the Claimants do not dispute that Dr. Alexandrov has been repeatedly challenged in multiple investment treaty arbitrations on account of his previous engagements with The Brattle Group, nor that The Brattle Group is involved in the related proceeding *UniCredit*.[64]

(3) It Is Significant that Dr. Alexandrov Chose Not to Submit Observations

73. Dr. Alexandrov has declined to submit any observations on the Respondent's Disqualification Proposal. In the Respondent's view, this indicates that Dr. Alexandrov has

[60] Further Observations para. 18 (the tally having been updated by the Respondent in its Further Observations due to a recent appointment).

[61] Further Observations para. 19.

[62] Further Observations para. 20

[63] Further Observations para. 21.

[64] Further Observations para. 22.

chosen not to challenge any of the facts to be found or conclusions to be reached in the Respondent's Proposal. Further, the Respondent observes that Dr. Alexandrov has also chosen not to affirm his independence or impartiality.[65]

III. DECISION BY THE CHAIRMAN

74. The Chairman has considered the Parties' submissions, summarized above, and decides as follows.

A. TIMELINESS

75. Arbitration Rule 9(1) reads as follows:

> *A party proposing the disqualification of an arbitrator pursuant to Article 57 of the Convention shall promptly, and in any event before the proceeding is declared closed, file its proposal with the Secretary-General, stating its reasons therefor.*

76. The ICSID Convention and Rules do not specify a number of days within which a proposal for disqualification must be filed. Accordingly, the timeliness of a proposal must be determined on a case by case basis.[66]

77. In this case, the Respondent filed the Proposal 13 days after the constitution of the Tribunal, which was the Respondent's first opportunity to propose the disqualification of an arbitrator pursuant to Chapter V of the ICSID Convention and Arbitration Rule 9. The Claimants do not contest the timeliness of the proposal. In the circumstances, the

[65] Further Observations paras. 48-52.

[66] See *BSG Resources Limited, BSG Resources (Guinea) Limited and BSG Resources (Guinea) SÀRL v. Republic of Guinea* (ICSID Case No. ARB/14/22), Decision on the Proposal to Disqualify All Members of the Arbitral Tribunal (December 28, 2016) para. 60 ("*BSG*"); *Burlington Resources Inc. v. Republic of Ecuador* (ICSID Case No. ARB/08/5), Decision on the Proposal for Disqualification of Professor Francisco Orrego Vicuña (December 13, 2013) para. 73 ("*Burlington*"); *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/07/30) Decision on the Proposal to Disqualify a Majority of the Tribunal (May 5, 2014) para. 39 ("*Conoco*"); *Abaclat and others v. Argentine Republic* (ICSID Case No. ARB/07/5), Decision on the Proposal to Disqualify a Majority of the Tribunal (February 4, 2014) para. 68 ("*Abaclat*").

Chairman considers that this disqualification proposal was promptly filed for the purposes of Arbitration Rule 9(1).

B. THE APPLICABLE LEGAL STANDARD

78. Article 57 of the ICSID Convention allows a party to propose the disqualification of any member of a tribunal. It reads as follows:

> *A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14. A party to arbitration proceedings may, in addition, propose the disqualification of an arbitrator on the ground that he was ineligible for appointment to the Tribunal under Section 2 of Chapter IV.*

79. A majority of decisions have concluded that the word "manifest" in Article 57 of the Convention means "evident" or "obvious,"[67] and that it relates to the ease with which the alleged lack of the required qualities can be perceived.[68]

80. The disqualification proposal alleges that Dr. Alexandrov manifestly lacks the qualities required by Article 14(1). Article 14(1) provides:

> *Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators.*

81. While the English version of Article 14 of the ICSID Convention refers to "*independent judgment*," and the French version to "*toute garantie d'indépendance dans l'exercice de*

[67] E.g., *BSG* para. 53, *Burlington* para. 68 n.83; *Abaclat* para. 71 n.25; *Blue Bank International & Trust (Barbados) Ltd. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/12/20), Decision on the Proposal to Disqualify José Maria Alonso (November 12, 2013) para. 61 n.43 ("*Blue Bank*"); *Repsol, S.A. and Repsol Butano, S.A. v. Argentine Republic* (ICSID Case No. ARB/12/38), Decision on the Proposal for Disqualification of Arbitrators Francisco Orrego Vicuña and Claus von Wobeser (December 13, 2013) para. 73 n.58 ("Repsol"); *Conoco* para. 39.

[68] C. Schreuer, *The ICSID Convention: A Commentary*, Second Edition (2d Ed. 2009), page 1202 paras. 134-154.

leurs fonctions" (guaranteed independence in exercising their functions), the Spanish version requires "*imparcialidad de juicio*" (impartiality of judgment). Given that all three versions are equally authentic, it is accepted that arbitrators must be both impartial and independent.[69]

82. Impartiality refers to the absence of bias or predisposition towards a party. Independence is characterized by the absence of external control. Independence and impartiality both "protect parties against arbitrators being influenced by factors other than those related to the merits of the case."[70]

83. Articles 57 and 14(1) of the ICSID Convention do not require proof of actual dependence or bias; rather, it is sufficient to establish the appearance of dependence or bias.[71] All relevant facts shall be taken into account in establishing the appearance of dependence or bias.[72]

84. The legal standard applied to a proposal to disqualify an arbitrator is an "objective standard based on a reasonable evaluation of the evidence by a third party." As a consequence, the subjective belief of the party requesting the disqualification is not enough to satisfy the requirements of the Convention.[73]

85. The Parties have referred to IBA Guidelines on Conflicts of Interest in International Arbitration in their arguments. While these rules or guidelines may serve as useful references, the Chairman is bound by the standard set forth in the ICSID Convention. Accordingly, this decision is made in accordance with Articles 57 and 58 of the ICSID Convention.

[69] The parties agree on this point at Application paras. 16-17; Response para. 4; see also *BSG* para. 56; *Burlington* para. 65, *Abaclat* para. 74, *Blue Bank* para. 58, *Repsol* para. 70, *Conoco* para. 50.

[70] *BSG* para. 57; *Burlington* para. 66; *Abaclat* para. 75; *Blue Bank* para. 59; *Repsol* para. 71; *Conoco* para. 51.

[71] *BSG* para. 57; *Burlington* para. 66; *Abaclat* para. 76; *Blue Bank* para. 59; Repsol para. 71; *Conoco* para. 52.

[72] *Tidewater* para. 40; *Alpha Projektholding GmbH* para. 64.

[73] *Burlington* para. 67; *Abaclat* para. 77; *Blue Bank* para. 60; *Repsol* para. 72; *Conoco* para. 53.

C. MERITS

86. For the reasons set out below, the Chairman rejects the Respondent's Proposal. The grounds alleged for the disqualification of Dr. Alexandrov do not meet the required standard, either individually or taken cumulatively.

(1) Multiple Appointments by Other Claimants in ICSID Cases and in ICSID Cases Against Croatia

87. The first ground of the Respondent's proposal concerns Dr. Alexandrov's multiple appointments by claimants generally and by other claimants in cases against Croatia in particular. The Chairman notes that the Parties do not dispute the tally of cases in which Dr. Alexandrov has been appointed by claimants or appointed by claimants in cases against Croatia.[74] Nor do they dispute that the criteria for disqualification due to multiple appointments are "qualitative rather than quantitative."[75] Therefore, the Respondent's position is that the number of appointments caused "an increased likelihood that an arbitrator will be at the very least unconsciously biased in favour of the appointing party" on whom Dr. Alexandrov relies for professional income.[76]

88. The decisions in *Tidewater* and *Vivendi I* are instructive in this regard. In *Tidewater*, the unchallenged arbitrators stated that "multiple appointments as arbitrator by the same party in unrelated cases are neutral, since in each case the arbitrator exercises the same independent function."[77] The Chairman finds that the same principle applies in this case to multiple appointments by different claimants, even if they are in cases against the same respondent. In *Vivendi I*, the unchallenged arbitrators stated that a finding that a lack of impartiality or independence is manifest "must exclude reliance on speculative

[74] Proposal paras. 27, 35; see Response para. 7.

[75] Proposal para.48; see Response para. 12.

[76] Proposal para.36.

[77] *Tidewater* para. 60.

assumptions or arguments" and that "the circumstances actually established . . . must negate or place in clear doubt the appearance of impartiality."[78]

89. The Chairman finds that the Respondent has not submitted any evidence of Dr. Alexandrov's bias beyond allegations of unconscious bias nor has the Respondent submitted evidence of financial dependence. The Respondent's allegations of unconscious bias and financial dependence are the kind of speculative assumptions or arguments that would not lead a third party undertaking a reasonable evaluation of Dr. Alexandrov's appointments by claimants to conclude that the alleged lack of impartiality or independence is manifest. As a result, the Chairman rejects the Respondent's Proposal based on this ground.

(2) Consideration of the Same Legal Issue in Multiple Arbitrations

90. Second, the Respondent proposes Dr. Alexandrov's disqualification because he may consider the same legal issues in this case and in *Gavrilović*, another ICSID case against Croatia under the same BIT.

91. The Chairman agrees that where a proposal for disqualification rests on consideration of the same legal issue in multiple arbitrations, the mere exposure of an arbitrator to the same legal issue in multiple arbitrations is insufficient to disqualify that arbitrator.[79] There must be an additional—significant—overlap of facts that are specific to the merits and the parties involved, as was the case in *Caratube*.[80]

92. Aside from the possibility that the same legal issue may arise in both *Gavrilović* and this case, and that the cases arise out of the same BIT, there is no similarity between the two cases let alone a significant overlap in facts and parties.[81] Thus, there is no basis for a third

[78] *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*,ICSID Case No. ARB/97/3, Decision on the Challenge to the President of the Committee (October 3, 2001) para. 25 ("*Vivendi I*").

[79] See, e.g., *İçkale* paras. 119-120.

[80] *Caratube* paras. 78, 84, 86, 90 (upholding a proposal to disqualify due to a significant overlap in the underlying facts with another case).

[81] Response para. 38; Further Observations para. 38.

party undertaking a reasonable evaluation of the facts alleged to conclude that Dr. Alexandrov manifestly lacks impartiality and independence on this ground.

(3) The Alleged History of Appointments between Dr. Alexandrov and WilmerHale

93. Third, it is not contested that as counsel Dr. Alexandrov appointed Gary Born twice in other arbitration proceedings. It is also not contested that WilmerHale has proposed Dr. Alexandrov to act as an arbitrator in this case and three others, *J&P-AVAX S.A.* and *Grand Express* in which he accepted the appointment and *Addiko* in which he declined the appointment.[82]

94. Both Parties rely on the decision on the proposal for disqualification filed in *SGS v. Pakistan*, which states in relevant part,

> *It is commonplace knowledge that in the universe of international commercial arbitration, the community of active arbitrators and the community of active litigators are both small and that, not infrequently, the two communities may overlap, sequentially if not simultaneously. It is widely accepted that such an overlap is not, by itself, sufficient ground for disqualifying an arbitrator. Something more must be shown if a challenge is to succeed.*[83]

95. The Chairman is persuaded that without "something more", this tally of "cross-appointments" would not by itself demonstrate to a third party undertaking a reasonable evaluation of the evidence that Dr. Alexandrov manifestly lacks the qualities required under Article 14(1). The Respondent has not proffered any other evidence of Dr. Alexandrov's bias in favor of WilmerHale. Thus, the Respondent's Proposal is rejected on this ground.

(4) The Potential Expert Testimony of The Brattle Group in *UniCredit*

96. The last ground of the Respondent's proposal relates to the purported use of The Brattle Group, with whom Dr. Alexandrov allegedly has a longstanding professional relationship,

[82] Proposal paras. 39-40; Response paras. 41-43.

[83] *SGS para.* 25.

by the claimants in *UniCredit*, another ICSID case against Croatia involving the same state measure and BIT. According to the Respondent, "[I]t is within the public domain that the Brattle Group is to provide expert testimony on quantum" in *UniCredit*.[84] But it is noted that the Respondent does not cite to or exhibit the referenced information in the public domain.

97. In this case, the Claimants have not retained The Brattle Group, and Dr. Alexandrov should not be privy to The Brattle Group's expert testimony in *UniCredit* because he is not an arbitrator in that proceeding. On these facts, there is no basis for a third party undertaking a reasonable evaluation of these facts to conclude that Dr. Alexandrov manifestly lacks the qualities required under Article 14(1) of the ICSID Convention because the claimants in *UniCredit* purportedly retained The Brattle Group.

(5) Conclusion

98. In sum, the Chairman finds that a third party undertaking a reasonable evaluation of the facts alleged and the Parties' arguments on each ground would not conclude that they evidence a manifest lack of the qualities required under Article 14(1) of the ICSID Convention. Nor does the Chairman find that the cumulation of the facts alleged and the Parties' arguments lead to such a conclusion. Accordingly, the Respondent's Proposal must be rejected.

[84] Proposal at para. 43.

IV. DECISION

99. Having considered all the facts alleged and the arguments submitted by the Parties on each ground and cumulatively, and for the reasons stated above, the Chairman rejects the Respondent's Proposal to Disqualify Dr. Stanimir Alexandrov.

Chairman of the ICSID Administrative Council

Dr. Jim Yong Kim