

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

OĻEGS ROŠČINS

Claimant

and

REPUBLIC OF LITHUANIA

Respondent

ICSID Case No. ARB/18/37

**ORDER OF THE TRIBUNAL TAKING NOTE OF THE
DISCONTINUANCE OF THE PROCEEDING**

Members of the Tribunal

Prof. Lawrence Boo, President

Ms. Isabelle Coutant Peyre

Mr. David A. Pawlak

Secretary of the Tribunal

Ms. Frauke Nitschke

Date of dispatch to the Parties: November 5, 2019

REPRESENTATION OF THE PARTIES

Representing Mr. Oļegs Roščins:

Professor Stanislovas Tomas
1, Rue Ténao, app. 31B
Monaco 98000
Principality of Monaco

Representing Republic of Lithuania:

Ms. Dalia Baležentė
Ms. Jurga Greičienė
Ministry of Justice
30 Gedimino Avenue
Vilnius 01104
Republic of Lithuania

and

Mr. Robert Volterra
Mr. Graham Coop
Mr. Gunjan Sharma
Volterra Fietta
8 Mortimer Street
Fitzroy Place
London W1T 3JJ
United Kingdom

and

Ms. Vilija Vaitkutė Pavan
Ms. Giedrė Aukštuolienė
Mr. Rapolas Kasparavičius
Ellex Valiūnas ir partneriai
Jogailos str. 9/1
01116 Vilnius
Republic of Lithuania

I. PROCEDURAL HISTORY

1. On August 28, 2018, the International Centre for Settlement of Investment Disputes (“ICSID” or the “Centre”) received an electronic copy of a Request for Arbitration together with Exhibits 1 through 16, submitted by Mr. Roščins against the Republic of Lithuania (the “Request”).
2. ICSID acknowledged receipt of the Request on August 29, 2018. The prescribed lodging fee was subsequently received by wire transfer in two installments on September 10 and 27, 2018. Having received the lodging fee, an electronic copy of the Request was transmitted to the Ministry of Justice, Republic of Lithuania, on September 28, 2018 in accordance with Rule 5(2) of the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (the “Institution Rules”).
3. On October 12, 2018, the Centre requested certain clarifications from Mr. Roščins regarding the Request. These clarifications were received by the Centre on October 16, 2018.
4. On October 16, 2018, the Secretary-General of ICSID registered the Request in accordance with Article 36(3) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”) and notified the Parties of the registration. In the Notice of Registration, the Secretary-General invited the Parties to proceed to constitute an arbitral tribunal as soon as possible in accordance with Institution Rule 7. A note on the applicable provisions regarding constitution of the arbitral tribunal was also transmitted to the Parties.
5. Mr. Roščins, the Claimant in this arbitration, is represented by Professor Stanislovas Tomas, Monaco. The Republic of Lithuania (“Lithuania” or the “Respondent”) is represented in this arbitration by Ms. Dalia Baležentė and Ms. Jurga Greičienė, Ministry of Justice of Lithuania, Messrs. Robert Volterra, Graham Coop and Gunjan Sharma of Volterra Fietta, London, and Ms. Vilija Vaitkutė Pavan, Ms. Giedrė Aukštuolienė and Mr. Rapolas Kasparavičius of Ellex Valiūnas ir partneriai, Vilnius.

6. On November 5, 2018, ICSID received a letter from the Respondent addressed to counsel for the Claimant, containing a proposal regarding the method of constitution of the Tribunal in this proceeding. The Secretariat acknowledged receipt of this communication pursuant to Rule 2(2) of the Rules of Procedure for Arbitration Proceedings (the “Arbitration Rules”) and invited the Claimant to respond to the Respondent’s proposal.
7. On November 14, 2018, the Centre received an email from counsel for the Claimant, attaching an October 24, 2018 message from counsel for the Claimant addressed to the Respondent. The October 24, 2018 letter indicated that counsel for the Claimant had at that time (i) made a proposal to the Respondent regarding the composition of the Tribunal in this proceeding and (ii) indicated his intent to appoint Ms. Isabelle Coutant Peyre as arbitrator.
8. On November 15, 2018, ICSID acknowledged receipt of the Claimant’s communication and took note that the Parties had not reached agreement on the number of arbitrators and the method of their appointment. ICSID further informed the Parties that – as stated in the note regarding the constitution of the tribunal which accompanied the Notice of Registration – absent a determination of the number of arbitrators and the method of their appointment, the Centre was unable to take action on the appointment of Ms. Coutant Peyre.
9. By letter of November 16, 2018, the Respondent informed ICSID that it considered that the Claimant had made certain misrepresentations in his October 24, 2018 letter and that the Respondent had “never accepted the Claimant’s proposals regarding the method of appointment of the Respondent’s arbitrator and/or the President of the Tribunal.” (*emphasis in original*).
10. By letter of November 19, 2018, counsel for the Claimant proposed that the Tribunal consist of three arbitrators, one arbitrator to be appointed by each party and the third, the presiding arbitrator, to be appointed by the Chairman of the Administrative Council.
11. On December 19, 2018, more than 60 days after the registration of the Request, the Claimant informed ICSID that it opted for the formula provided for in Article 37(2)(b) of

the ICSID Convention. By letter of December 20, 2018, ICSID informed the Parties that the Tribunal in this case was therefore to be constituted pursuant to that provision and recalled that the Tribunal was to consist of three arbitrators, one arbitrator appointed by each party and the President of the Tribunal was to be appointed by agreement of the Parties.

12. On January 11, 2019, ICSID received an email from the law firm of Volterra Fietta, attaching a Power of Attorney signed by Mr. Elvinas Jankevičius, Minister of Justice of the Republic of Lithuania, informing the Centre of the appointment of Mr. Robert Volterra and Mr. Graham Coop of Volterra Fietta in London and Ms. Vilija Vaitkutė Pavan, Ms. Giedrė Aukštuolienė and Mr. Rapolas Kasparavičius of Ellex Valiūnas ir partneriai in Vilnius as counsel for the Respondent in this proceeding. By email dated January 12, 2019, ICSID was informed by Mr. Volterra that Mr. Gunjan Sharma of Volterra Fietta was added to the Respondent's legal team.
13. By letter of January 17, 2019, the Claimant appointed Ms. Isabelle Coutant Peyre as arbitrator in this case. Following a request by the ICSID Secretariat, the Claimant provided contact details of Ms. Coutant Peyre, indicating her French nationality and providing an updated *curriculum vitae* on January 18, 2019.
14. In his January 17, 2019 communication, the Claimant further (i) requested that the Chairman of the ICSID Administrative Council appoint the arbitrators not yet appointed and designate an arbitrator to be the President of the Tribunal, and (ii) stated that he did not transmit his correspondence to the law firms of Ellex Valiūnas and Volterra Fietta, because the Claimant considered these appointments to have been made "in breach of Lithuanian and international law." On January 18, 2019, the Claimant confirmed that his request under (i) above was a request pursuant to Article 38 of the ICSID Convention.
15. On January 18, 2019, counsel for the Respondent appointed Mr. David A. Pawlak, a national of the United States of America and Ireland, as an arbitrator in this case.
16. On the same day, counsel for the Claimant objected to the appointment of Mr. Pawlak as arbitrator appointed by the Respondent asserting that (i) in light of the Claimant's ICSID

Convention Article 38 request no arbitrator appointment could be made by the Respondent and (ii) the appointment of the law firms of Volterra Fietta and Ellex Valiunas was “illegal” and therefore no appointment could be made by them.

17. By letter of January 18, 2019, ICSID recalled that until completion of the appointment process pursuant to an ICSID Convention Article 38 appointment request, it remained possible for the Parties to appoint an arbitrator and to agree on the President of the Tribunal. The Centre further informed the Parties that it would seek acceptance from Ms. Coutant Peyre and Mr. Pawlak of their respective appointments pursuant to Arbitration Rule 5(2). In addition, the Centre informed the Parties that given the Respondent’s appointment of Mr. Pawlak as arbitrator in this case, the Centre would proceed to act upon the Claimant’s Article 38 appointment request with respect to the appointment of the President of the Tribunal only. ICSID further noted that in order to assist the Parties in selecting a mutually agreeable presiding arbitrator, a ballot procedure would be conducted. If the Parties did not agree on any of the candidates proposed in the ballot, the Chairman of the ICSID Administrative Council would proceed to appoint the President of the Tribunal from the ICSID Panel of Arbitrators following consultations with the Parties.
18. On January 21, 2019, counsel for the Claimant reiterated his objection to the appointment of Mr. Volterra as a representative of the Respondent. On the same day, counsel for the Respondent indicated that the Respondent’s team had been trying to engage with counsel for the Claimant which was denied by counsel for the Claimant.
19. By letter of January 22, 2019, the Centre informed the Parties that Ms. Coutant Peyre had accepted her appointment as arbitrator and provided Ms. Coutant Peyre’s signed declaration pursuant to Arbitration Rule 6.
20. By letter of January 24, 2019, counsel for the Claimant reiterated that he did not consider Mr. Volterra to be a representative of the Respondent and again objected to the appointment of Mr. Pawlak as arbitrator by the Respondent’s counsel. By letter of the same day, ICSID recalled its receipt of a “Power of Attorney” in favour of the law firms of Volterra Fietta and Ellex Valiunas and signed by the Minister of Justice of Lithuania pursuant to Arbitration Rule 18(1). On the basis of this authorization, counsel so appointed notified the

Secretariat on January 18, 2019 of the Respondent's appointment of Mr. Pawlak as arbitrator. ICSID further informed the Parties that any questions regarding the validity of an arbitrator appointment was a matter for the Tribunal to decide once constituted.

21. On January 28, 2019, ICSID provided the Parties with a ballot form listing five candidates, inviting them to return the completed form to ICSID by close of business on February 4, 2019.
22. On February 4, 2019, ICSID notified the Parties that Mr. Pawlak had accepted his appointment as arbitrator in this case and provided Mr. Pawlak's signed declaration and accompanying statement to the Parties.
23. Following a request from the Claimant's counsel for an extension of the deadline to return the completed ballot form, this deadline was extended on January 31, 2019 to February 11, 2019. The Respondent's completed ballot form was received on February 4, 2019, the Claimant's completed form was received on February 11, 2019. On the same day, ICSID notified the Parties that the ballot had resulted in an agreement by the Parties to appoint Professor Lawrence Boo, a national of Singapore, as President of the Tribunal. Professor Boo accepted his appointment on February 14, 2019.
24. On February 15, 2019, 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. Ms. Frauke Nitschke, ICSID Legal Counsel/Team Leader, was designated to serve as Secretary of the Tribunal.
25. On February 21, 2019, each Party was requested to make an initial advance payment of US\$150,000 (one hundred fifty thousand United States dollars) pursuant to ICSID Administrative and Financial Regulation 14(3)(d) by March 25, 2019 (in light of ICSID Administrative and Financial Regulation 29(2)).
26. By a second letter dated February 21, 2019, the Parties were also invited to confirm their availability to participate in a first session with the Tribunal in London on either April 8, 10 or 11, 2019.

27. On February 25, 2019, counsel for the Respondent notified the Tribunal that the Respondent intended to file objections pursuant to Arbitration Rule 41(5).
28. Following confirmation from counsel for each Party regarding their respective ability to participate in a first session on April 8, 2019, the Tribunal confirmed on February 28, 2019 that the first session was scheduled to be held in London on April 8, 2019.
29. The Tribunal also provided a draft agenda for the first session and a draft Procedural Order No. 1 to facilitate the Parties' preparation for the session. The Parties were invited to submit, by March 22, 2019, a joint proposal advising the Tribunal of any agreements the Parties were able to reach regarding the agenda items and/or of their respective positions on matters that they were unable to agree upon.
30. In light of the Respondent's February 25, 2019 notification that it intended to file objections pursuant to Arbitration Rule 41(5), the Tribunal's February 28, 2019 letter also set out a schedule for the written and oral procedure in this regard.
31. On March 6, 2019, the Respondent's counsel notified ICSID that it would await counsel for the Claimant to initiate the Parties' joint preparation for the first session.
32. By email of March 8, 2019, the Claimant's counsel indicated that he may no longer be available to participate in the first session on April 8, 2019.
33. On the same day, the Tribunal requested counsel for the Claimant to ensure his availability for the first session as scheduled on April 8, 2019, and encouraged the Parties to cooperate and provide the Tribunal by March 22, 2019 with a joint proposal regarding the draft agenda for the first session and draft Procedural Order No. 1.
34. On March 12, 2019, ICSID received from the European Commission an "Application for Leave to Intervene as Non-Disputing Party" dated March 7, 2019 pursuant to ICSID Arbitration Rule 37(2) (the "Non-disputing party application").
35. On March 14, 2019, counsel for the Claimant requested an extension until June 1, 2019 to pay the Claimant's share of the initial advances requested by ICSID's letter of February 21, 2019. The Claimant's counsel further expressed concerns for the life and safety of his

client if the first session and hearing on the Respondent's Arbitration Rule 41(5) objection were to be held in London, referencing recent events at the Claimant's offices.

36. On March 18, 2019, the Respondent filed its objections pursuant to ICSID Arbitration Rule 41(5), stating *inter alia* that

[t]he Respondent specifies as precisely as possible that the bases for the objections are that the claims are manifestly without legal merit because the Centre manifestly lacks jurisdiction ratione temporis, ratione personae, ratione materiae and ratione voluntatis; the Claimant manifestly does not have any claim on the merits; and the Claimant manifestly lacks any claim to damages.

37. On March 20, 2019, citing the wording of Arbitration Rule 41(5), i.e., that the objecting "party shall specify as precisely as possible the basis for the objection," the Tribunal directed the Respondent "to provide the bases of the objections" (*emphasis in original*) by March 22, 2019 at 11am EST, providing sufficient information to allow the Claimant to file a meaningful response. The Tribunal directed the Claimant to file his response to the objections as soon as possible but no later than April 5, 2019, in light of the first session scheduled for April 8, 2019.

38. By the same letter, the Tribunal noted counsel for the Claimant's concerns regarding London as a venue for the first session and stated that it was prepared to move the first session to Paris. The Tribunal further requested the Respondent to provide information regarding the status of its outstanding payment requested by ICSID's February 21, 2019 letter.

39. With regard to the Tribunal's request for a payment status update, the Respondent informed the Tribunal by letter of March 21, 2019 that

... although it stands ready to pay its share of the advance on costs, with all respect, the Respondent will not pay its share of the advance on costs until it receives confirmation from ICSID that the Claimant has paid his share. Despite this, however, the Respondent would be willing to advance a reasonable amount of advance on costs as may be identified by the Tribunal (and depending on the amount identified by the Tribunal), solely to cover the first session and the

Tribunal's determination by written decision of the Respondent's objections under ICSID Arbitration Rule 41(5).

40. On the same day and further to the Tribunal's direction of March 20, 2019, the Respondent filed further submissions pursuant to Arbitration Rule 41(5).
41. On March 22, 2019, counsel for the Respondent sought instructions from the Tribunal on how to file its comments on draft Procedural Order No. 1 and the draft agenda for the first session, alleging a "continuous boycott" of the Respondent's counsel by counsel for the Claimant.
42. By letter of the same day, the Tribunal addressed various matters. The Tribunal confirmed that the Claimant's observations on the Respondent's Arbitration Rule 41(5) objections were due on April 5, 2019. The Tribunal further noted that no payment had been received from either party and if payment remained outstanding by the deadline of March 25, 2019, the procedure under Administrative and Financial Regulation 14(3)(d) would be followed. With regard to the Respondent's inquiry of March 21, 2019 regarding the amounts necessary to cover the costs relating to the first session, the hearing on the Respondent's Rule 41(5) objections and the Tribunal's written determination in this regard, the Tribunal confirmed that an amount of US\$150,000 would be needed to cover the anticipated costs. In light of the Claimant's concern regarding London as a venue for the first session and hearing, the Tribunal further determined that the session and hearing would be held in Paris on April 8, 2019, provided that payment of the required advances was received within the prescribed time limit. Finally, the Parties were directed to file their observations on the Non-disputing party application by no later than April 1, 2019.
43. By a further email on the same day and in response to the Respondent's March 22, 2019 email requesting directions from the Tribunal as to how the Respondent should file its comments on draft Procedural Order No. 1 and the draft agenda for the first session, the Tribunal noted that it considered it beneficial to receive from the Parties a joint proposal, setting out any agreements reached and/or their respective positions on matters on which the parties could not reach agreement. Absent a joint proposal, each Party was directed to

file its observations with ICSID by no later than March 25, 2019, copying the other Party on such communication.

44. On March 25, 2019, each Party filed its comments on the draft agenda for the first session and draft Procedural Order No. 1, without copying the other Party's counsel on its communication despite the Tribunal's instructions.
45. On the same day, the Respondent filed its observations on Non-disputing party application.
46. On the same day, the Claimant indicated he would not be able to pay his share of the required advances before June 1, 2019. Subsequently on the same day, the Respondent informed ICSID that it did not intend to pay its share of the initial advances requested from the Parties until after the Claimant's payment was received. By a subsequent email, the Respondent filed comments on certain statements made by the Claimant in his March 25, 2019 observations on the draft agenda for the first session and draft Procedural Order No. 1.
47. By letter of March 26, 2019, the Parties were notified of the default pursuant to Administrative and Financial Regulation 14(3)(d) and either Party was invited to pay the outstanding advances requested on February 21, 2019 within 15 days, i.e., by April 10, 2019.
48. On March 28, 2019, absent receipt of any funds from the Parties, the Tribunal informed the Parties that the first session and hearing on the Respondent's objections pursuant to Arbitration Rule 41(5), scheduled to be held on April 8, 2019, had been cancelled. In light of the cancellation of the first session, the Claimant was directed to file his response to the Respondent's objections pursuant to Arbitration Rule 41(5) by April 9, 2019. The Tribunal further reminded the Claimant of the April 1, 2019 deadline to file his observations on the Non-disputing party application.
49. On the same day, the President of the Tribunal informed the Parties that he had been invited by the Asia International Arbitration Centre to join a panel discussion in June 2019, and that counsel for the Respondent, Mr. Robert Volterra, would be a co-panelist. The Parties were invited to express any objection to the President's conference participation by April

- 1, 2019. The Parties' observations were received on March 28 and April 1, 2019, respectively. The Parties were subsequently informed that the President of the Tribunal would not be participating in the June 2019 panel with Mr. Volterra, but had instead been placed in a different session.
50. By email of March 31, 2019, the Claimant responded to the Respondent's comments of March 25, 2019 on the Claimant's observations on the draft agenda for the first session and draft Procedural Order No. 1, reiterating his objections to the appointment of Respondent's counsel.
 51. On April 1, 2019, the Claimant filed his observations on the Non-disputing party application.
 52. On April 8, 2019, ICSID received a letter directly from the Claimant, Mr. Roščins, stating that Prof. Tomas, his counsel, had been detained by Lithuanian authorities and that he was unaware of the circumstances leading to Prof. Tomas' detention. Mr. Roščins requested that the Tribunal extend the April 9, 2019 deadline for the Claimant to file a response to the Respondent's objections pursuant to Arbitration Rule 41(5) to April 30, 2019.
 53. By letter of April 9, 2019, the Respondent set out its view on the events leading to the detention of the Claimant's counsel. According to the Respondent, the Claimant's counsel had been arrested in Vilnius on April 8, 2019 for vandalising a memorial to a historical figure. Prof. Tomas is said to have called the police himself and video recorded the events. The Respondent provided a video said to be depicting Prof. Tomas' detention and opposed the Claimant's deadline extension request.
 54. By letter of April 10, 2019, the Claimant's counsel requested a 10-day extension to file his response to the Respondent's objections pursuant to Arbitration Rule 41(5). In the event his request for extension was denied, the Claimant's counsel attached a proposed response to the Respondent's Arbitration Rule 41(5) objections.
 55. Absent receipt of payment from either Party within the 15-day default period, the Secretary-General moved the Tribunal on April 12, 2019 to stay the proceeding for non-payment pursuant to Administrative and Financial Regulation 14(3)(d). On the same day,

the Tribunal stayed the proceeding for non-payment of the required advances pursuant to that Regulation.

56. By letter of October 11, 2019, the Tribunal requested each Party to provide an update regarding the status of payment of the outstanding advances by October 15, 2019 and reminded the Parties that pursuant to Administrative and Financial Regulation 14(3)(d), “if the proceeding was stayed for a consecutive period in excess of six months, the Secretary-General may, after notice to and as far as possible in consultation with the Parties, move that the Tribunal discontinue the proceeding.”
57. On October 14, 2019, the Respondent provided its payment update, noting that the Respondent had “always been willing and able to pay its share of the outstanding amounts as long as the Claimant paid [his] share” and requesting that the Secretary-General move the Tribunal to discontinue the proceeding in accordance with Administrative and Financial Regulation 14(3)(d). The Respondent further requested the Tribunal to

award the Respondent all of its legal fees and expenses in responding to (i) the Claimant’s first request for arbitration dated 25 February 2015 and subsequent requests for treaty-based consultations...and (ii) the Claimant’s second request for arbitration dated 29 August 2019, including the filing of the Respondent’s objections under ICSID Arbitration Rule 41(5)... and the Respondent’s Observations on its Objections under ICSID Arbitration Rule 41(5) dated 21 March 2019.

58. According to the Respondent, the total amount of its legal fees and expenses comprise EUR290,606.14.
59. By letter of October 15, 2019, counsel for the Claimant requested a 6-month extension to pay the Claimant’s share of the initial advance requested on February 21, 2019. The Claimant objected to a discontinuance of the proceeding at this stage, which the Claimant’s counsel considered “senseless” stating that the Claimant would not be prevented from filing another request for arbitration once sufficient funds were secured. The Claimant further opposed the Respondent’s cost allocation request on the basis that the Respondent failed to provide an invoice to evidence these costs and argued that in light of the Respondent’s non-payment of its share of the required advances, the Respondent “has a

duty to cover the costs of the Claimants [sic].” According to the Claimant’s counsel, the costs incurred by the Claimant amount to EUR357,623.35. Attached to the Claimant’s letter was an invoice in this amount addressed to Mr. Roščins. In the event the Tribunal dismissed the Claimant’s 6-month extension request, the Claimant requested that the Tribunal order the Respondent to pay the costs incurred by the Claimant. The Claimant also requested that the Tribunal also dismiss the Respondent’s request for costs as unsupported.

60. By letter of October 17, 2019, the Claimant expressed concerns about the authenticity of the Respondent’s October 14, 2019 letter stating that this letter was contrary to positions previously expressed by the Respondent in this proceeding and requested “the Tribunal (or its secretariat) to confirm on a hard paper that the statement of Lithuania dated 14/10/2019 is authentic.”
61. On October 18, 2019, ICSID notified the Parties that the Secretary-General was considering moving the Tribunal to discontinue the proceeding for non-payment in accordance with Administrative and Financial Regulation 14(3)(d). The Parties were invited to provide further observations in this regard by October 23, 2019.
62. On October 23, 2019, the Respondent provided its further observations noting, *inter alia* that the invoice in the amount of EUR357,623.35 attached to the Claimant’s letter of October 15, 2019 indicated that it was paid, highlighting that the Claimant was able to pay more than EUR300,000 to his counsel but did not pay the advance due to ICSID. The Respondent further took note of the Claimant’s intent to file a request relating to this dispute a third time with ICSID, which the Respondent opposed on multiple grounds. The Respondent reiterated its request to be awarded its legal fees and expenses and asked that the Tribunal order a discontinuance of the proceeding “with prejudice.”
63. On October 24, 2019, the Claimant requested that the Claimant’s earlier communications of October 15 and 17, 2019 be treated as observations in response to the Secretary-General’s October 18, 2019 invitation.

64. On October 24, 2019, the Secretary-General moved the Tribunal to discontinue the proceeding pursuant to Administrative and Financial Regulation 14(3)(d).

II. ANALYSIS

65. It is clear under Administrative and Financial Regulation 14(3)(b) that there is no requirement for the Centre to provide any service in connection with a proceeding or to pay the fees, allowances or expenses of the members of any Commission, Tribunal or Committee, unless sufficient advance payments have previously been made. The Tribunal refers in that respect to Administrative and Financial Regulation 14(2) and (3), which provide in relevant part that:

(2) All payments, including reimbursement of expenses, to the following shall in all cases be made by the Centre and not by or through either party to the proceeding:

(a) members of Commissions, Tribunals and Committees;

(b) witnesses and experts summoned at the initiative of a Commission, Tribunal or Committee, and not of one of the parties;

(c) members of the Secretariat of the Centre, including persons (such as interpreters, translators, reporters or secretaries) especially engaged by the Centre for a particular proceeding;

(d) the host of any proceeding held away from the seat of the Centre pursuant to Article 63 of the Convention.

(3) In order to enable the Centre to make the payments provided for in paragraph (2), as well as to incur other direct expenses in connection with a proceeding (other than expenses covered by Regulation 15):

(a) the parties shall make advance payments to the Centre as follows:

(i) initially as soon as a Commission or Tribunal has been constituted, the Secretary-General shall, after consultation with the President of the body in

question and, as far as possible, the parties, estimate the expenses that will be incurred by the Centre during the next three to six months and request the parties to make an advance payment of this amount;

[...]

(b) the Centre shall not be required to provide any service in connection with a proceeding or to pay the fees, allowances or expenses of the members of any Commission, Tribunal or Committee, unless sufficient advance payments shall previously have been made.

66. Notwithstanding the above, the Centre and the Members of the Tribunal have continuously provided services in connection with this proceeding since it first began.
67. The Tribunal further notes that Administrative and Financial Regulation 14(3)(d) provides in relevant part that

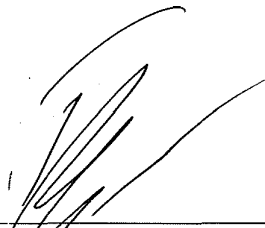
[i]f any proceeding is stayed for non-payment for a consecutive period in excess of six months, the Secretary-General may, after notice to and as far as possible in consultation with the Parties, move that the competent body discontinue the proceeding [...]
(emphasis added).

68. The present proceeding was stayed on April 12, 2019 for non-payment. More than six months have passed without payment from either Party. On October 18, 2019, the Secretary-General gave notice to and consulted as far as possible with the Parties regarding the possible discontinuance of the proceeding for non-payment. The Parties' observations were received on October 23 and 24, 2019 respectively. On October 24, 2019, the Secretary-General moved that the Tribunal discontinue the proceeding.
69. In light of Administrative and Financial Regulation 14(3)(b) and (d), absent any payment from either party following the stay of the proceeding for non-payment for a period in excess of six months, and after due deliberations, the Tribunal decides in these circumstances to discontinue this proceeding in accordance with Administrative and Financial Regulation 14(3)(d). The Tribunal makes no ruling on any of the requests made


by the Parties in their respective communications of October 14, 15, 17, and 23, 2019 [see paras. 57 to 62 above].

III. ORDER

70. The Tribunal discontinues the proceeding for lack of payment of the initial advance payment in accordance with Administrative and Financial Regulation 14(3)(d).



Isabelle Coutant Peyre
Arbitrator



David A. Pawlak
Arbitrator



Lawrence Boo
President of the Tribunal