J. East Asia & Int'l L. Vol. 18/No.2 (2025); 255-280
Publication type : Research Article
Section : Issue Focus
DOI : http://dx.doi.org/10.14330/jeail.2025.18.2.01

Arbitrator Impartiality and Academic Expression: The Ukraine v. Russia Case in PCA

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This article examines the 2024 decision in Ukraine v. Russia (PCA Case No. 2019-28), in which a United Nations Convention on the Law of the Sea tribunal upheld challenges to two arbitrators – Donald McRae and Rüdiger Wolfrum – due to their prior support for a 2022 L'Institut de Droit International's Declaration condemning Russian aggression. The tribunal found that the involvement of these arbitrators raised justifiable doubts as to impartiality, highlighting the expanding role of perceived bias in inter-State arbitration. In a forceful dissent, Christopher Greenwood cautioned against conflating general academic expression with prejudgment, emphasizing the need for judicial restraint and procedural integrity. This note explores the tribunal's reasoning, dissenting views, procedural standards, and comparative jurisprudence, including Canfor v. USA and Perenco v. Ecuador. It reflects on the growing tension between academic freedom and arbitrator impartiality, evolving disclosure norms, and the risk of strategic challenges in politically sensitive disputes, with implications for the future practice of international adjudication.

Keywords

PCA Case 2919-28, Arbitrator Impartiality, Russia-Ukraine Case, Academic Freedom and Judicial Bias, UNCLOS, IDI Declaration, Reasonable Observer

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All the websites cited in this article were last visited on November 12, 2025.

I. Introduction

On November 25, 2018, three Ukrainian naval vessels were seized by Russian coast guard ships near Kerch Strait, and the 24 crew members aboard were detained and transferred to Moscow, where they were held for several months before being released in a September 2019 prisoner exchange.[1] Russian authorities claimed that the Ukrainian ships had entered Russian territorial waters unlawfully and engaged in provocative acts, breaching domestic navigation regulations and threatening maritime security. Conversely, Ukraine maintained that its naval vessels had been engaged in routine, peacetime passage consistent with both international maritime law and bilateral agreements, condemning the seizure as an unlawful use of force and a violation of the United Nations Convention on the Law of the Sea (UNCLOS),[2] particularly the principles of innocent passage (Articles 17–26), transit passage (Articles 37–44), and the immunities of warships and naval personnel (Articles 32 and 95–96).[3]

In April 2019, Ukraine initiated arbitral proceedings against Russia under Annex VII of UNCLOS, requesting that the Permanent Court of Arbitration (PCA) decided several key legal issues: a) the legality of the seizure and detention under UNCLOS; b) the application of sovereign immunity for military vessels and personnel; c) Russia's obligations to return the vessels and provide reparations; and d) the extent to which Russia's jurisdictional objections (e.g., based on the "military activities" exception in Article 298(1)(b) of UNCLOS) barred the tribunal's competence.[4] This arbitration proceeding (Ukraine v. Russia, PCA Case No. 2019-28) was a rare inter-State proceeding amid an ongoing armed conflict. In particular, it brought a point at issue when Russia challenged

1 James Kraska, The Kerch Strait Incident: Law of the Sea or Law of Naval Warfare?, EJIL: Talk! (Dec. 3, 2018), https://www.ejiltalk.org/the-kerch-strait-incident-law-of-the-sea-or-law-of-naval-warfare; *Russia shows captured Ukrainian sailors in "confession" video*, CBS NEWS (Nov. 27, 2018), https://www.cbsnews.com/news/russia-ukraine-sailors-captured-kerch-strait-crimea-confession-video-2018-11-27; *Russia seizes Ukrainian naval ships*, REUTERS (Nov. 28, 2018), https://www.reuters.com/news/picture/russia-seizes-ukrainian-naval-ships-idUSRTS27SIS.

2 Bernard Oxman, *The Rule of Law and the United Nations Convention on the Law of the Sea*, 7(3) EUR. J. INT'L L. 353-71 (1996).

3 United Nations Convention on the Law of the Sea (UNCLOS), Dec. 10, 1982, 1833 U.N.T.S. 397, Part II, §§ 3, arts. 17-26 [Innocent Passage in the Territorial Sea]; Part III, § 2, arts. 37-44 [Transit Passage]; Part II, § 3, art. 32; Part VII, § 1, arts. 95-6 [Immunities of Warships and Naval Personnel].

4 ITLOS, Case concerning the detention of three Ukrainian naval vessels (Ukraine v. Russian Federation), Provisional Measures, https://www.itlos.org/en/main/cases/list-of-cases/case-concerning-the-detention-of-three-ukrainian-naval-vessels-ukraine-v-russian-federation-provisional-measures.

two of the arbitrators on the basis of alleged bias.[5] On March 6, 2024, an ad hoc arbitral tribunal rendered a notable decision on Russia's challenges.[6] The tribunal decided by a 2–1 majority to uphold the Russian Federation's challenge against the two arbitrators, namely Donald McRae and Rüdiger Wolfrum, based on their support of the 2022 L'Institut de Droit International (IDI) Declaration on Aggression in Ukraine (hereinafter IDI Declaration).[7] This decision stirred intense debate regarding the boundaries between academic expression and judicial impartiality. Especially, Christopher Greenwood appended a vigorous dissent, raising important legal distinctions and policy concerns.[8] This decision thus marked a significant development in international arbitration practice with respect to arbitrator's impartiality standards in inter-State arbitration. It addressed the delicate balance between an arbitrator's freedom of expression in academic or professional capacities and the parties' right to an impartial tribunal.

This research aims to examine the procedural background of the challenges and explore the procedural and substantive foundations of the tribunal's decision, including the majority's reasoning (notably its approach to impartiality and timeliness) and the normative rationale in Greenwood's dissent. Furthermore, the author addresses the broader implications of this case regarding the legitimacy and conduct of adjudicators with respect to inter-State adjudication, particularly regarding academic expression, perceived bias, and arbitrator's obligation to disclosure. Foundational international law texts are referenced to examine the relevant key doctrines of State responsibility and peaceful dispute settlement,[9] as well as maritime jurisdiction and dispute settlement under the UNCLOS.[10]

5 Ukraine v. Russian Federation (Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen), Decision on Challenges, PCA Case No. 2019-28 (Nov. 27, 2020) [hereinafter Ukraine v. Russia].

6 *Id*.

7 A broader implication of the IDI Declaration is pertinent to how obligations *erga omnes* can be enforced through international adjudication. *See e.g.*, Christian Tams, Enforcing Obligations Erga Omnes in International Law 97-305 (2005).

8 Ukraine v. Russia [Dissenting Opinion of Sir Christopher Greenwood].

9 James Crawford, Brownlie's Principles of Public International Law 523-51 (2019).

10 Malcolm Shaw, International Law 677-738 (2021).

II. Procedural Context and the Challenge Mechanism

A. Procedural Background and Basis of the Challenges

1. Case History and Tribunal Composition

Ukraine initiated the arbitration on April 1, 2019, under the UNCLOS Annex VII, alleging violations of the law of the sea related to the Kerch Strait incident. A five-member tribunal was constituted, comprising Donald McRae (Canada) as President, Rüdiger Wolfrum (Germany), Gudmundur Eiriksson (Iceland), Christopher Greenwood (UK), and Vladimir Golitsyn (Russia), who was later replaced by Alexander Vylegzhanin (Russia).[11] A June 2022 award on preliminary objections narrowed the issues on the merits by excluding "military activities" from the tribunal's jurisdiction. The case then entered the merits phase, with hearings scheduled for mid-2024.[12]

2. The IDI Declaration on Aggression in Ukraine

On March 1, 2022, amid Russia's broader military operation in Ukraine, the IDI adopted its Declaration.[13] This IDI declaration forcefully denounced Russia's "massive military intervention" in Ukraine as contrary to fundamental principles of international law, including the prohibition on the use of force, respect for territorial integrity, the self-determination of peoples, and non-intervention. It emphasized Russia's obligations under international law (e.g., compliance with humanitarian law and prior commitments) and called for a cessation of aggression. Notably, both McRae and Wolfrum, as IDI members, had voted in favor of the IDI Declaration. During the arbitration, neither arbitrator disclosed their participation in the IDI Declaration to the parties, presumably viewing it as a general statement of principle unrelated to the specific Annex VII case.

3. Russia's Challenges to McRae and Wolfrum

On October 17, 2023, Russia argued that McRae and Wolfrum's votes for the

11 Ukraine v. Russia [Case Information].

12 Arron Honniball, Dispute Concerning Detention of Ukrainian Naval Vessels/Servicemen, Decision on Challenges, De Maribus (Mar. 15, 2024), https://demaribus.net/2024/03/15/dispute-concerning-detention-of-ukrainian-naval-vessels-servicemen-decision-on-challenges.

13 Institute of International Law, Declaration of the Institute of International Law on Aggression in Ukraine (Mar. 1, 2022), https://www.idi-iil.org/en/declaration-de-linstitut-de-droit-international-sur-lagression-en-ukraine.

IDI Declaration raised doubts about their impartiality in the case.[14] Russia formally submitted a Statement of Challenges on November 24, 2023, seeking the disqualification of both arbitrators.[15] The challenge alleged that such strong public pronouncements against Russia's conduct were "unacceptable for arbitrators" of a dispute involving Russia. In Russia's view, the IDI Declaration's "clearly accusatory language" and the backdrop of heightened tensions between Ukraine and Russia created a "real, appreciable risk" that McRae's and Wolfrum's outlook had been tainted against Russia.[16]

Russia's challenge rested on the argument that by supporting the IDI Declaration, which condemned Russia's broader aggression against Ukraine, the two arbitrators were prejudiced as to the dispute at hand. The challenged arbitrators had failed to disclose their support for the IDI Declaration, triggering the argument that their impartiality was compromised, particularly in a politically charged proceeding between sovereign States.

4. Challenge Proceedings

Pursuant to the PCA's Rules of Procedure (Article 19) and established arbitral practice, the two challenged arbitrators did not participate in deciding the challenges pertaining to themselves.[17] Procedural Order No. 8 (December 15, 2023) set out a process whereby the remaining three unchallenged members – Eiriksson (acting as President for this matter), Greenwood, and Vylegzhanin –would decide the challenges.[18] Both parties made written submissions on the challenge, and McRae and Wolfrum were invited to comment on the allegations. The decision on the challenges was rendered on March 6, 2024, which was subsequently published with the parties' consent.[19] On the same day, McRae and Wolfrum resigned from the tribunal,[20] preempting any further procedural steps for their removal and allowing new appointments to be made for the continuation of the case.

14 Ukraine v. Russia [Russian Federation's Statement of Challenges to Prof McRae and Judge Wolfrum].

15 *Id*.

16 *Id*.

17 Ukraine v. Russia [Decision on Challenges] & [Procedural Order No. 8].

18 *Id*.

19 *Id*.

20 *Id*.

III. The Majority Decision: Impartiality Standard and Timeliness

A. The Majority's Reasoning: Impartiality Standard, Timeliness, and Justifiable Doubts

1. Applicable Standard of Impartiality

All three deciding arbitrators agreed that the legal standard for disqualifying an arbitrator in this inter-State arbitration was an "objective test" of whether there were "justifiable doubts" about the arbitrators' independence or impartiality.[21] Although Annex VII of the UNCLOS lacks detailed rules on arbitrator challenges, the tribunal looked to general principles in international arbitration and previous inter-State cases. The tribunal endorsed the need to adhere to standards appropriate for inter-State disputes, specifically a high bar for disqualification, giving the unique context of sovereign-party cases. In accordance with the tribunal's words, it could "draw guidance from all materials emanating from bodies called upon to dispense justice with comparable concerns for impartiality," including international courts, as long as those principles could be transposed appropriately to inter-State arbitration.[22]

The tribunal drew from established jurisprudence, including the Mauritius v. United Kingdom case, in which the "justifiable doubts" standard, derived from the PCA's optional rules for arbitrations between States, had been applied.[23] A test, grounded in whether a reasonable third person would perceive the arbitrator as lacking impartiality or independence, was applied to determine whether the "justifiable doubts" standard had been met.[24] This standard mirrors that used in other fora, such as International Court of Justice (ICJ) and International Centre for Settlement of Investment Disputes (ICSID) tribunals, and aligns with the International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration (2014).[25]

21 *Id.*

22 *Id.*

23 Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom), Award, PCA Case No. 2011-03, ¶¶ 485-540 (Mar. 18, 2015) [hereinafter Chagos MPA Arbitration (Award)].

24 Chagos MPA Arbitration (Award), Reasoned Decision on Challenge, ¶¶ 41-83 & 110-40. This decision set a precedent for the standard of "justifiable doubts" regarding arbitrator impartiality under UNCLOS, which was a central issue in the Ukraine v. Russia arbitration.

25 The doctrinal background of such standards is analyzed comprehensively in Natalie Klein's monograph, which

Notably, the tribunal addressed the duty of disclosure and its relationship to impartiality. While acknowledging that McRae and Wolfrum ought to have disclosed their votes on the IDI Declaration, the tribunal characterized this lapse as "an aberration on the part of two conscientious arbitrators."[26] Non-disclosure, in itself, was not treated as determinative of bias; the majority opinion stressed that the failure to disclose did "not on its own impact the assessment of their independence and impartiality" in this case.[27] This indicates that the decision turned on an evaluation of substantive impartiality, not a mere breach of disclosure protocols.

2. Timeliness of the Challenges

A threshold issue was whether Russia's challenges had been brought in a timely manner. Ukraine contended that Russia had waited too long. The IDI Declaration was published in March 2022, whereas Russia argued that it had only discovered the arbitrators' involvement in late 2023 and had acted promptly thereafter.[28] The tribunal noted that although neither the UNCLOS nor the agreed Rules of Procedure set a strict time limit for challenges, a timeliness requirement could be inferred from the general principles of good faith and procedural fairness.[29] Citing the doctrines of waiver and acquiescence, the decision observed that a party may forfeit its right to challenge if it "failed to assert [it] promptly" once aware of the relevant facts.[30] Moreover, at advanced stages of proceedings, a late challenge could so disrupt the "fair administration of justice" and equality of arms as to be inadmissible.[31]

Applying these principles, the majority appeared to have accepted that Russia's challenge was not unreasonably delayed under the circumstances. The decision noted that Russia had first learned of the IDI Declaration voting record on September 1, 2023 (via a public report) and had brought the matter to the

contextualizes the procedural rules of UNCLOS Part XV and Annex VII. Moreover, Sands and Klein explore institutional safeguards for impartiality in international judicial bodies, lending conceptual support for the tribunal's procedural framework and its analogical reasoning. *See* Natalie Klein, Dispute Settlement in the UN Convention on the Law of the Sea 227-316 (2005); Bowett's Law of International Institutions (Philippe Sands & Pierre Klein eds., 2001).

26 Ukraine v. Russia [Decision on Challenges], at ¶ 96.

27 *Id*.

28 *Id*. at ¶ 34.

29 *Id*. at ¶¶ 65-98.

30 *Id*. at ¶ 98.

31 *Id*. at ¶¶ 66-98.

tribunal's attention in the next month.[32] While Russia had indisputably known of the existence of the IDI Declaration much earlier, the majority was satisfied that knowledge of the arbitrators' specific involvement had come only in late 2023.[33] There was no evidence that Russia had "consciously refrained" from acting on known information or raised the issue as a tactical afterthought.[34] As a consequence, the tribunal did not deem the challenge waived. The decision implicitly balanced the timing against potential prejudice, noting that allowing the challenge would be consistent with justice and party equality at that stage of the proceedings.[35] Indeed, the tribunal preemptively mitigated disruption by adjusting the procedural calendar once the challenge was filed.[36] By ruling the challenges admissible, the majority signaled that parties in inter-State arbitrations are expected to act diligently but will not be penalized for delays if critical facts were not reasonably available to them sooner.

3. The Majority's Finding of Justifiable Doubt

On the merits, the majority (Eiriksson and Vylegzhanin) concluded that McRae's and Wolfrum's support for the IDI Declaration did raise legitimate doubts about their impartiality, warranting their removal. After carefully reviewing the text of the IDI Declaration and the circumstances of its adoption, the tribunal found the Declaration's content sufficiently pertinent to the present dispute that an informed third party would question the two arbitrators' neutrality.[37] In the final analysis, the unchallenged arbitrators held "by two votes to one" that the challenges should be upheld and the arbitrators removed.

While the majority's decision was lengthy, its essence is captured in a key passage. The tribunal stated that it was "unable to agree that the issues faced [in the arbitration] can be confined in [the] rather narrow fashion" suggested by those opposing the challenge.[38] In particular, the majority noted that "the sovereign weight of the armed and police forces [of Russia had] been aligned against the military vessels of a foreign State with the consequent alleged deprivation of the rights of military personnel of a foreign State."[39] In other words, the majority

32 *Id*. at ¶¶ 65-99.
33 *Id*. at ¶ 99.
34 *Id*. at ¶¶ 63-98.
35 *Id*. at ¶¶ 87-98.
36 *Id*.
37 *Id*. at ¶¶ 89-96.
38 *Id*. at ¶¶ 100-5.
39 *Id*.

refused to view the case in isolation from its broader factual context. Although the arbitration concerned the UNCLOS rights (e.g., navigational freedoms and immunity of naval vessels), the incident occurred amid armed hostilities between Russia and Ukraine.[40] The majority appeared to consider that the spirit and context of the dispute – an armed confrontation at sea between two States – intersected with the subject matter of the IDI Declaration, which condemned Russia's use of force against Ukraine.

McRae and Wolfrum had taken a public stance on Russia's responsibility for unlawful aggression, which was closely related to the context of the case. Even if the IDI Declaration addressed events "significantly later in time and different in degree" with respect to the Kerch Strait incident, the majority believed that an overlap in the underlying principles and factual matrix was present. The IDI Declaration expressly dealt with Russia's use of armed force against Ukraine – a matter the tribunal felt it could not neatly disentangle from the naval incident at issue.[41] Thus, a reasonable observer could fear that the two arbitrators, having "firmly denounce[d]" Russia's actions as illegal aggression, might (even subconsciously) be predisposed against Russia's arguments in the arbitration.[42] The standard applied was the appearance of bias rather than proof of actual bias; the majority emphasized that the mere appearance of partiality (if sufficiently grounded in objective facts) undermines an arbitrator's acceptability.[43] By upholding the challenges, the decision reinforced the principle that in international adjudication, even a legitimate expression of principle by an arbitrator can become disqualifying if it gives rise to a justifiable perception of prejudgment relevant to the case.

IV. Greenwood's Dissent: Judicial Restraint and the Risk of Overreach

Christopher Greenwood disagreed the circumstances merited disqualification. His dissenting opinion concurred with the majority on the applicable legal standard:

40 *Id*.

41 *Id*.

42 *Id*. at ¶ 76.

43 *Id*. at ¶¶ 100-5.

he agreed that the objective "justifiable doubts" test governed and the threshold for removal in an inter-State case was high.[44] However, Greenwood diverged from his colleagues in the application of that standard to the facts, offering a sharply contrasting appraisal of both the relevance of the IDI Declaration and the timing of Russia's challenge.

Greenwood's dissenting opinion deserves close examination. He contended that the IDI Declaration related to a distinct set of facts – Russia's 2022 full-scale invasion of Ukraine – and not the 2018 naval incident before the tribunal. The issues in dispute concerned narrow, law of the sea-related questions, not the legality of armed force under jus ad bellum.[45] Hence, support for a general normative statement (i.e., the declaration) could not reasonably give rise to justifiable doubts.[46]

This reasoning aligns with prior ICJ practice, particularly the Court's tolerance of Judge Elaraby's participation in the 2004 "Wall Advisory Opinion" despite his earlier political statements.[47] This permissive view was reinforced by Andreas Zimmermann's commentary, which contextualized it within broader norms of judicial independence and the ICJ's historical aversion to disqualifications absent clear evidence of prejudgment.[48] Greenwood's dissent also reflected deeper institutional concerns. Excessively broad interpretations of the impartiality standard may deter qualified arbitrators with public records of engagement in legal discourse. Greenwood's institutional concern also found resonance with Mackenzie's view, which cautioned against conflating professional engagement with legal discourse and impermissible bias.[49] They both underscored that judicial impartiality should be assessed in a way that preserves the legitimacy of international benches and their accessibility to qualified legal academics and former government lawyers.[50]

Moreover, Greenwood's criticism of Russia's timing – emphasizing waiver

44 Ukraine v. Russia, *supra* note 8 at ¶¶ 6-12.

45 Jonathan Hell, *Acts of Aggression as Ipso Facto Violations of the Right to Life: Scrutinizing the Human Rights Committee's Proposed Link between Human Rights Law and the Jus ad Bellum*, 24(2) Chinese J. Int'l L. 1-102 (2025).

46 Ukraine v. Russia [Dissenting Opinion of Sir Christopher Greenwood], at ¶¶ 8-16.

47 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Rep. 2004, (July 9, 2004) [hereinafter ICJ Wall Advisory Opinion], https://www.un.org/unispal/document/auto-insert-178825.

48 The Statute of the International Court of Justice: A Commentary (Andreas Zimmermann et al. eds., 2019).

49 Ruth Mackenzie & Philippe Sands, *International Courts and Tribunals and the Independence of the International Judge*, 44(1) Harv. Int'l L. J. 271 (2003).

50 Ruth Mackenzie et al., Selecting International Judges: Principle, Process, and Politics (2010).

and estoppel – invoked the need to protect proceedings from tactical abuses and "guerrilla tactics." This critique was echoed by Jan Paulsson, who exposed the risks of opportunistic challenge strategies in high-stakes, international arbitrations.[51]

A. No Prejudgment of Issues

Greenwood's primary contention in his dissenting opinion was that the IDI Declaration had no bearing on the specific issues to be decided in this Annex VII arbitration.[52] In his view, the majority had stretched the connection between the IDI Declaration and the case's subject matter too far.[53] He pointed out that the IDI Declaration had been directed at Russia's full-scale invasion of Ukraine in February 2022 – events "occurring later in time, and of a fundamentally different character" than the naval incident of November 2018 before the tribunal.[54] Crucially, the tribunal's June 2022 award on preliminary objections had previously held that any "military activities" were outside the scope of this UNCLOS case.[55]

Thus, issues of jus ad bellum (the legality of Russia's invasion) and jus in bello (conduct of hostilities) were not on the table; the arbitration was confined to law of the sea-related questions such as the sovereign immunity of naval vessels and prompt release obligations.[56] Greenwood argued that nothing in the IDI Declaration – which enumerated breaches of principles like the prohibition of force and non-intervention – overlapped with the legal or factual questions the arbitral tribunal would actually need to decide.[57] In short, there could be no prejudgment; by voting for a general condemnation of Russia's aggression, McRae and Wolfrum had not prejudged any specific point that this tribunal should decide.[58] A reasonable, informed third person aware of the precise scope of the case would not, in Greenwood's assessment, doubt the arbitrators' impartiality merely because they had condemned aspects of Russia's conduct

51 Jan Paulsson, *Moral Hazard in International Dispute Resolution*, 25(2) ICSID Rev. – Foreign Inv. L. J. 339 (2010).

52 Ukraine v. Russia, *supra* note 8, at ¶18.

53 *Id*.

54 *Id*. at 10

55 *Id*. at ¶¶ 75-125.

56 Tamar Meisels, *Environmental Just Wars: Jus ad Bellum and the Natural Environment*, 42(2) J. Applied Phil. 620 (2025); Katie Johnston, *Artificial Intelligence and the "Armed Attack" Threshold in International Law*, Int'l L. Stud. (July 1, 2025), at 106, https://livrepository.liverpool.ac.uk/3193499.

57 Ukraine v. Russia, *supra* note 8, at ¶ 8.

58 *Id*.

unrelated to the law of the sea dispute.[59]

Greenwood also drew support from the practice of the ICJ in handling allegations of bias. He cited the ICJ's 2004 "Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" (hereinafter Wall Advisory Opinion), where Israel challenged Judge Nabil Elaraby's participation on the ground that, prior to joining the Court, he had given an interview accusing Israel of violating international law in Palestine.[60] In that instance, only one judge (Buergenthal) agreed that Elaraby's prior statements cast doubt on his impartiality; the other thirteen judges rejected the challenge, allowing Judge Elaraby to remain on the case.[61] Greenwood underscored that Judge Elaraby's comments had been directly related to the subject matter of the Wall Advisory Opinion (the Israeli–Palestinian conflict), whereas the IDI Declaration concerned events that "arose only after" the 2018 incident before the Annex VII tribunal.[62] If the ICJ could overlook a judge's arguably partisan statements about a dispute's core context, Greenwood implied, then the bar for disqualifying an arbitrator in the present case should certainly not be met by a far more tangential statement.[63] This analogy to the ICJ reflects a policy of judicial self-restraint; international adjudicators are often scholars or statesmen who have spoken on issues arising from current events, and disqualification is reserved for truly compromising circumstances. Greenwood evidently saw the situation of McRae and Wolfrum as falling well short of that threshold.

B. Timeliness and Good Faith

Greenwood's dissent also tackled the timeliness question head-on, taking a stricter view than the majority. He was "compelled to draw attention" to Russia's own delay in raising the issue.[64] The IDI Declaration, he noted, was widely publicized from the outset; it was forwarded to key international bodies like the UN Secretary-General and broadly disseminated in spring 2022.[65] The Russian government "was, therefore, aware of the IDI Declaration soon after it was adopted," as Greenwood put it bluntly.[66] At that time, Russia was engaged in

59 Ukraine v. Russia, *supra* note 8, at ¶¶ 10-2.

60 ICJ Wall Advisory Opinion, at ¶¶ 5-10.

61 *Id*.

62 Ukraine v. Russia, *supra* note 8, at ¶ 14.

63 *Id*.

64 *Id*. at ¶¶ 9-19.

65 *Id*. at ¶ 15.

66 *Id*. at ¶¶ 15-8.

multiple legal proceedings related to its actions in Ukraine (including at least two inter-State arbitrations and some investor–State claims concerning Crimea), and at least eight arbitrators across those cases were IDI Declaration members.[67] Given Russia's obvious interest in the issue, Greenwood found it "surprising" that Russia had made no inquiry in 2022 or early 2023 as to how those arbitrators – in any of the cases involving Ukraine – had voted on the IDI Declaration.[68] If Russia harbored concerns that IDI Declaration's affiliation might signal bias, a diligent party would have sought clarification or disclosure well before late 2023.[69] In Greenwood's view, Russia surely had had ample opportunity and, indeed, a duty to investigate potential bias much earlier, rather than wait passively until an external source in summer 2023 revealed the voting records.[70]

Furthermore, Greenwood observed that the two arbitrators themselves evidently believed that their IDI Declaration votes had no relevance to the case – a belief the majority seemed to initially share when noting the non-disclosure as an inadvertent aberration.[71] Russia, however, took a very different view of the significance of those votes. Thus, Greenwood suggested that once Russia had become aware of the IDI Declaration and felt as strongly as it did about its implications, it had been incumbent on Russia to promptly ask the question of its arbitrators (or seek disclosure via the tribunal) about theirs involvement with the Declaration.[72] By failing to do so in this case (and apparently in other cases), Russia arguably waived its right to object at a later stage.[73] In summary, the dissenting opinion faulted Russia for not exercising due diligence and good faith in a timely manner. Greenwood would have found the challenges inadmissible on this basis alone, quite apart from his substantive view that they lacked merit.[74]

C. Underlying Policy Concerns

Although couched in legal reasoning, Greenwood's dissent reflects broader policy worries about the precedent set by the majority. One concern is related to the potential chilling effect on arbitrators who are also academic or civic leaders. Many eminent arbitrators (especially in inter-State disputes) are members of

67 *Id*. at ¶¶ 16.
68 *Id*. at ¶ 9.
69 *Id*.
70 *Id*. at ¶¶ 7-15.
71 *Id*. at ¶ 18.
72 *Id*. at ¶¶ 15-8.
73 *Id*.
74 *Id*.

bodies like the IDI and academic institutions or have public service experience; they frequently engage in normative discourse on international law. Greenwood's approach implied that drawing a line between general expressions of principle and case-specific bias is crucial to avoid disqualifying all but the most reticent and tabula rasa arbitrators. Endorsing Russia's challenge might discourage arbitrators from participating in public debates or scholarly resolutions on important international issues for fear that doing so could later be construed as evidence of bias if a related dispute arises.

In this vein, Greenwood's citation of the ICJ's tolerance can be seen as advocating a high tolerance for extrajudicial expressions, lest the pool of available arbitrators be unfairly narrowed. Meanwhile, the other concern is in relation to procedural gaming; if parties know that even tangential statements can justify a challenge, they might hold back such information as a strategy or deploy challenges to delay proceedings or "tribunal-shop." Greenwood's emphasis on Russia's delay can be read as a warning against condoning such tactics; otherwise, the integrity and efficiency of arbitral proceedings could suffer.

In conclusion, Greenwood disagreed with the majority's decision to remove the arbitrators and made clear that, in his opinion, the Russian challenges should have been dismissed in their entirety. His dissenting opinion stands as a detailed counterargument, ensuring that the published decision on challenges contains both perspectives for the benefit of future jurisprudence.

V. Canfor v United States and Perenco v Ecuador: A Comparative Perspective

The majority decision upheld the challenge. It held that the IDI Declaration, while not directly addressing the 2018 Kerch Strait incident, was sufficiently connected to the broader factual context of the arbitration to merit the removal of the challenged arbitrators.[75] The tribunal emphasized that the appearance of bias, not only actual bias, sufficed to disqualify an arbitrator, an interpretation consistent with Canfor v United States and Perenco v Ecuador, where extrajudicial expressions also led to successful challenges.[76]

75 Ukraine v. Russia, *supra* note 8.

76 Canfor Corp. v. USA; Terminal Forest Prods. Ltd. v. United States of Am., UNCITRAL (NAFTA), Decision on

In framing the appearance of bias, the tribunal in Ukraine v. Russia cited the intersection between the IDI Declaration's condemnation of Russian military conduct and the context of armed conflict surrounding the Kerch Strait incident.[77] Although jurisdiction over "military activities" had been excluded at the preliminary objections stage, the tribunal rejected attempts to isolate the legal issues from their geopolitical context – a move reflecting the increasingly permeable boundary between international law and politics in State-to-State arbitration.[78]

In his dissenting opinion, however, Greenwood distinguished the scenario at hand from those in prior arbitrator challenge cases. He invoked the two aforementioned investor–State arbitrations that were cited by Russia in its challenge disputes, namely Perenco v. Ecuador and Canfor v. USA, where arbitrators were challenged based on prejudicial comments.[79] In Perenco v. Ecuador, the challenged arbitrator had, in a media interview, accused the respondent (Ecuador) of defying provisional measures orders in that very case, even labeling recalcitrant States like Ecuador in a pejorative manner.[80] Unsurprisingly, such challenge was upheld by the appointing authority, because a reasonable observer would conclude that the arbitrator had indeed prejudged the party's conduct in the case.[81]

In *Canfor v. USA*, an arbitrator had publicly boasted about his government's "winning every single challenge" in the ongoing softwood lumber dispute and disparaged the opposing party's litigation tactics as harassment.[82] There, although no formal ruling was issued (the arbitrator resigned voluntarily), the prejudicial nature of the remarks was evident.[83] Greenwood emphasized that in both cases, the arbitrator's comments had explicitly related to issues or parties in the very dispute to be decided, amounting to a prior judgment on the merits or of the party's credibility. In contrast, McRae and Wolfrum had made no such case-specific comments; rather, their votes for the IDI Declaration had constituted a general denunciation of aggression, not a comment on the

Preliminary Question (June 6, 2006) [hereinafter Canfor/Terminal Decision on Preliminary Question]; Perenco Ecuador Ltd. v. Republic of Ecuador & Empresa Estatal Petróleos del Ecuador (Petroecuador), ICSID Case No. ARB/08/6, Decision on Challenge to Arbitrator (Dec. 8, 2009) [hereinafter Perenco Decision on Challenge].

77 Ukraine v. Russia, *supra* note 8.

78 *Id*.

79 *Id*. at ¶ 11.

80 *Id*.

81 *Id*.

82 *Id*. at ¶¶ 11-2.

83 *Id*.

legal nuances of the Kerch Strait incident or Russia's litigation behavior in the arbitration. Greenwood's message was that the qualitative difference between a true prejudgment of a case and a broad statement of principle should matter. In his opinion, the majority had "completely ignore[d]" this difference.[84]

A. Canfor Corporation v. United States of America

In *Canfor Corporation v. the United States of America* (Canfor), a NAFTA Chapter 11 arbitration, the qualification and impartiality of arbitrators became a notable procedural issue, resulting in two high-profile resignations early in the proceedings.

1. Challenge to Claimant-Appointed Arbitrator Frank McKenna

Canfor initially appointed Frank McKenna, a former Premier of New Brunswick, as its arbitrator.[85] The US challenged this appointment upon discovering that McKenna had previously delivered a speech to a Canadian government council wherein he had characterized the US trade measures – central to the dispute – as intentional "harassment" of Canadian softwood lumber producers.[86] This prior public commentary raised concerns about his impartiality in the case at hand. Although McKenna initially refused to resign from the case, he stepped down on April 10, 2003, having been informed by the ICSID that the challenge would probably be upheld, and Canfor subsequently appointed Joseph Weiler as his replacement.[87]

2. Challenge to Respondent-Appointed Arbitrator Conrad Harper

The US appointed Conrad Harper, a former legal adviser to the Department of State, as its arbitrator.[88] In February 2005, Harper disclosed that he served as an unpaid director of Harvard University, which was involved in unrelated litigation

84 *Id*. at 3.

85 Jarrod Hepburn, Looking Back: Canfor/Tembec/Terminal Softwood Lumber Arbitrations Provided Early Engagement with Questions of Parallel NAFTA Chapter 11 Proceedings, Inv. Arb. Rep. (Oct. 10, 2019), https://www.iareporter.com/articles/looking-back-canfor-tembec-terminal-softwood-lumber-arbitrations-provided-early-engagement-with-questions-of-parallel-nafta-chapter-11-proceedings; Canfor Corp. v. USA; Terminal Forest Prods. Ltd. v. United States of Am., UNCITRAL, Submission in Support of Request for Consolidation, ¶ 2, Constitution of the Tribunal (Apr. 7, 2005) [hereinafter Canfor/Terminal Submission for Consolidation].

86 *Id*.

87 *Id*.

88 Canfor Corp. v. USA; Canfor/Terminal Submission for Consolidation, ¶ 5, Canfor's Challenge to Mr. Harper (Apr. 7, 2005).

against the US government.[89] Upon this disclosure, Canfor demanded his resignation, alleging a conflict of interest and improper ex parte communications due to Harper's consultation with the State Department's ethics office.[90] Despite the US's urging Harper to remain, emphasizing the lack of actual conflict and the inefficiency his resignation would cause, Harper resigned on March 2, 2005.[91]

3. Impact on Tribunal Composition and Proceedings

These challenges led to significant delays and necessitated the reconstitution of the tribunal. Following the resignations, the parties agreed to appoint Emmanuel Gaillard as the presiding arbitrator.[92] The reconstituted tribunal faced the complex task of addressing jurisdictional objections and managing the consolidation of parallel claims brought by other Canadian lumber companies, such as Tembec and Terminal Forest Products Ltd.[93]

4. Legal Significance

The challenges in the Canfor arbitration underscore the importance of arbitrator impartiality and the rigorous scrutiny applied to potential conflicts of interest in investor–State dispute settlement proceedings. They highlight the delicate balance between ensuring fair adjudication and maintaining the efficiency of arbitration processes. These incidents contribute to the broader discourse on the standards for arbitrator qualifications and the mechanisms for addressing perceived biases in international arbitration.[94]

B. Perenco Ecuador Limited v. Republic of Ecuador

In the *Perenco v. Ecuador* annulment proceedings, the qualification and impartiality of arbitrator Charles N. Brower were challenged by Ecuador under Article 52(1)(a) of the ICSID Convention, which allows annulment on the ground that "the tribunal was not properly constituted."[95]

89 *Id*.

90 *Id*.

91 *Id*.

92 Hepburn, *supra* note 84.

93 *Id*.

94 Ukraine v. Russia, *supra* note 8, at 3-4.

95 Perenco Ecuador Ltd. v. Republic of Ecuador, ICSID Case No. ARB/08/6, Decision on Challenge to Arbitrator (Dec. 8, 2009); Perenco Ecuador Ltd. v. Republic of Ecuador, ICSID Case No. ARB/08/6, Decision on Annulment (May 28, 2021) [hereinafter Perenco Decisions]; Debevoise & Plimpton LLP, Debevoise Secures Over $400 Million Definitive Victory for Perenco Against Ecuador (June 2, 2021), https://www.debevoise.com/news/2021/06/debevoise-secures-over-400-million-definitive.

1. Grounds Alleged by Ecuador

Ecuador based its challenge on an August 2009 interview in which Brower had made several controversial statements.[96] The respondent argued that these comments demonstrated prejudgment and created justifiable doubts about his impartiality.[97] Specifically, Ecuador objected to Brower's characterizing it as a "recalcitrant host country" and drawing comparisons between Ecuador's conduct and Libya's historical expropriation of foreign oil assets.[98] These remarks, made while the arbitration was ongoing, suggested that Brower had already formed conclusions about Ecuador's liability and noncompliance with international obligations.

2. Legal Standard Applied: Justifiable Doubts

The PCA Secretary-General evaluated the challenge under the IBA Guidelines' objective standard.[99] General Standard 2(b) requires a determination of whether a reasonable third person, with knowledge of the relevant facts, would have justifiable doubts about the arbitrator's impartiality based on the circumstances.[100] This appearance-of-bias test focuses on public perceptions rather than requiring proof of actual prejudice.[101]

3. Analysis of the Challenged Conduct: "Reasonable Observer" Standard

The Secretary-General's analysis focused on three problematic aspects of Brower's interview: (1) the term "recalcitrant" carried clearly pejorative connotations when applied to a party in ongoing proceedings;[102] (2) Libya's comparison implicitly suggested that Ecuador's actions amounted to expropriation, a core issue in the

96 Perenco Decisions [Decision on Challenge to Arbitrator], at ¶ 27. It reads: "Editor: Tell us what you see as the most pressing issues in international arbitration. Brower: There is an issue of acceptance and the willingness to continue participating in it, as exemplified by what Bolivia has done and what Ecuador is doing. Ecuador currently is expressly declining to comply with the orders of two ICSID tribunals with very stiff interim provisional measures, but they just say they have to enforce their national law and the orders don't make any difference. But when recalcitrant host countries find out that claimants are going to act like those who were expropriated in Libya, start bringing hot oil litigation and chasing cargos, doing detective work looking for people who will invoke cross-default clauses in loan agreements, etc., the politics may change. After a certain point, no one will invest without having something to rely on."

97 Perenco Decisions [Decision on Challenge to Arbitrator], at ¶¶ 28-9.

98 *Id*. at ¶ 49. *See also* Chiara Giorgetti, *Challenges of Arbitrators in International Investment Arbitration: The ICSID Experience*, 32(3) ICSID Rev. – Foreign Inv. L. J. 437-59 (2017).

99 Perenco Decisions [Decision on Challenge to Arbitrator], at ¶¶ 38-68.

100 *Id*. at ¶¶ 41-62.

101 *Id*.

102 *Id*. at ¶¶ 49-58.

arbitration;[103] and (3) the speculative comments about potential enforcement actions indicated prejudgment of Ecuador's future compliance.[104] While arbitrators may generally speak publicly, these specific remarks about a pending case crossed the line.

4. Decision and Consequences: Disqualification and Replacement

The Secretary-General sustained the challenge. He found that Brower's comments had created circumstances that would lead a reasonable observer to doubt his impartiality.[105] This decision resulted in Brower's disqualification and replacement on the tribunal.[106] The case established an important precedent about arbitrators' public communications, emphasizing that even indirect suggestions about a party's conduct may compromise the appearance of neutrality required in international arbitration.

VI. Reconceptualizing Arbitral Governance: The Ukraine v. Russia Legacy and Its Systemic Implications

A. Enhanced Disclosure Obligations: Reconciling Academic Freedom and Procedural Integrity

The Ukraine v. Russia decision represents a watershed moment in the evolving doctrine of arbitrator disclosure in inter-State arbitration.[107] While the tribunal reiterated that nondisclosure is not, in itself, conclusive proof of bias, it underscored the seriousness of failing to disclose information that could bear upon perceptions of impartiality.

The Ukraine v. Russia case may be distinguished from other cases regarding the challenges to arbitrators in the sense that the tribunal explicitly recognized

103 *Id*.

104 *Id*.

105 *Id*. at ¶ 57.

106 *Id*. at ¶¶ 64-8.

107 Beatrice Bonafe, The Collective Dimension of Bilateral Litigation: The *Ukraine v Russia* Case Before the ICJ, Questions of International Law (Nov. 30, 2022), https://www.qil-qdi.org/the-collective-dimension-of-bilateral-litigation-the-ukraine-v-russia-case-before-the-icj.

the professional, academic, or institutional activities – including participation in international organizations, public endorsements of declarations, and scholarly commentary – within the scope of required disclosures.[108] This marks a significant shift from the classical doctrinal position of defending wide-ranging academic autonomy for arbitrators on the grounds that it sustains the diversity and independence of the arbitral bench.[109] Specifically, the Ukraine v. Russia tribunal provided that even in an academic context, certain statements risk undermining the appearance of neutrality essential to arbitral legitimacy.[110]

In practice, this shift means that arbitrators must now exercise heightened vigilance in their academic and professional engagements. This expectation is not limited to direct, case-specific conflicts but extends to broader institutional affiliations and public statements, even when these are ostensibly unrelated to the pending dispute. Such disclosure standard reflects broader trends in international dispute settlement, where transparency and procedural fairness are increasingly prioritized in response to evolving expectations among States and their populations.[111]

The implications are far-reaching. Not only might eminent legal scholars hesitate before signing public statements on contentious topics, but arbitral institutions themselves are likely to face pressure to clarify or update their ethical guidelines. This development aims to preempt procedural crises by ensuring that potential concerns about arbitrator impartiality are aired and addressed at the earliest possible stage.

Yet, this heightened disclosure obligation introduces a delicate balancing act. On the one hand, the obligation increases transparency and fortifies procedural integrity; while, on the other, it risks chilling academic debate and limiting the pool of qualified arbitrators. Leading practitioners and scholars with expertise in rigorous engagement in public legal debates may find themselves ineligible for service if their prior expressions are viewed as compromising their neutrality.

108 *Id*.

109 Polonskaya Ksenia, *Diversity in the Investor-State Arbitration: Intersectionality Must be a Part of the Conversation*, 19(1) MELB. J. INT'L L. 259 (2018); Yanwen Zhang, *Equitable Representation on International Benches and the Appointment of Tribunal Members in Investor–State Dispute Settlement: A Historical Perspective*, 14(4) J. INT'L DISP. SETTLEMENT 428 (2023).

110 Khansa Ardiningrum, *Navigating Legitimacy and Authority: The International Tribunal for the Law of the Sea Provisional Measures in Ukraine v. Russia*, 37(1) MIMBAR HUKUM 142 (2025), https://journal.ugm.ac.id/v3/MH/article/view/20960; Daniele Musmeci, *Reflecting on the interpretation and application of the international convention for the suppression of the financing of terrorism in light of the Ukraine v Russia case*, 16(1) J. INT'L DISP. SETTLEMENT 1-22 (2025).

111 Bone Putra & Chami Yassine, *Judicial and Administrative Approaches to Civil Service Dispute Resolution: A Comparative Study between Indonesia, India, and Egypt*, 1(1) INT'L J. CONST. & ADMIN. L. 21-41 (2025).

The Ukraine v. Russia decision thus reignited the perennial debate over where to draw the line between permissible academic activity and impermissible prejudgment. Such a debate is likely to intensify as more inter-State cases arise from significant political issues or profound ethical debates.

B. Expanding the Role of Context in Bias Assessment: The "Reasonable Observer" Standard Revisited

One of the most doctrinally significant elements of the Ukraine v. Russia decision lies in its approach to the "reasonable observer" standard in the assessment of bias.[112] While the standard itself is well-established in arbitral jurisprudence, the decision illustrates how its application in the inter-State context is evolving to encompass not only the narrow legal issues at hand but also the broader geopolitical and social realities in which such disputes unfold.[113]

The majority's willingness to consider the overall context of the Russia–Ukraine conflict – rather than confining itself to the legal merits of the specific case – signals a departure from the traditional text-based assessments that have characterized much of the jurisprudence in this area. This "contextual realism" recognizes that the legitimacy of arbitral decisions, especially in cases involving allegations of aggression or armed conflict, is inextricably tied to perceptions of fairness among States and the international community at large.[114]

At the same time, this approach introduces new complexities. By giving greater weight to the appearance of bias in light of broader conflict, tribunals risk setting a standard that may, in practice, be too stringent. If even high-level, principle-driven statements in academic or diplomatic fora are seen as grounds for disqualification, the available pool of qualified arbitrators could be greatly diminished. Many distinguished jurists and professors, whose expertise is precisely what makes them valuable as arbitrators, have taken public positions on major issues of international law.[115]

This tension was evident in the divergent views of the majority and dissent in the Ukraine v. Russia case.[116] The majority's standard of a reasonable observer

112 Marchuk Iryna, *Russia, International Law and the International Court of Justice*, *in* Research Handbook on the International Court of Justice 443-71 (Achilles Skordas & Lisa Mardikian eds., 2025).

113 Al-Khasawneh Ali & Vanessa Sousa, *The Thorny Intersection of Personal Opinion and Arbitrator Impartiality: Lessons from Crescent Petroleum and Other Cases*, 40(4) Arb. Int'l 537-46 (2024).

114 Churchill Robin, *Dispute Settlement in the Law of the Sea: Survey for 2022*, 38(4) Int'l J. Marine & Coastal L. 603-38 (2023).

115 Putra & Yassine, *supra* note 111; Iryna, *supra* note 112; Ali & Sousa, *supra* note 113.

116 Ukraine v. Russia [Decision on Challenges].

sensitive to the realities of the ongoing conflict sharply contrasted with the dissent's more formalistic, legally bound assessment. As a result, future tribunals are likely to face challenges in calibrating the appropriate scope of contextual analysis, striving to ensure legitimacy and impartiality without unduly narrowing the field of eligible arbitrators.[117]

C. Procedural Strategy, Timeliness, and the Risk of Tactical Challenges

The Ukraine v. Russia decision also illuminated the procedural vulnerabilities that can arise from the interplay between evolving disclosure expectations and the timing of arbitrator challenges.[118] The tribunal's discussion of the risk of "sandbagging" – i.e., parties' strategically withholding challenges until a moment of maximum tactical advantage – reflects concerns long voiced by practitioners such as Christopher Greenwood.[119]

Absent clear procedural deadlines, especially in the context of the UNCLOS and similar international legal regimes, there is an increasing risk that parties will exploit the system by raising disqualification challenges late in the proceedings, thereby disrupting the efficiency and continuity of the arbitration. The Ukraine v. Russia case itself was nearly derailed at the merits hearing by such a challenge, illustrating the real-world consequences of procedural loopholes.[120]

The tribunal's response was to reassert the importance of procedural good faith and promptness. While the majority ultimately declined to apply a strict time bar in this instance, it signaled that moving forward, tribunals may scrutinize not just the merits of a challenge, but the reasons for any delay in raising it. Parties are thus put on notice; if they become aware of facts that could form the basis for a challenge, they must act swiftly or risk being deemed to have waived their objection.[121]

This development is likely to influence both party behavior and institutional practice. States and their counsel will be incentivized to conduct more exhaustive due diligence regarding arbitrator backgrounds, not only at the time of appointment but throughout the course of the proceedings. Arbitrators, for their part, will need to remain cautious in their public and professional activities,

117 Putra & Yassine, *supra* note 111; Iryna, *supra* note 112; Ali & Sousa, *supra* note 113.

118 *Id*.

119 Ali & Sousa, *supra* note 113.

120 *Id*.

121 Ukraine v. Russia [Decision on Challenges].

understanding that even new statements or affiliations can become grounds for challenge.[122]

At the institutional level, there may be also growing impetus to clarify challenge procedures and deadlines, whether through amendments to existing rules or the adoption of supplemental guidelines. It aims to ensure that challenges are resolved promptly and fairly, protecting both the parties' right to an impartial tribunal and the integrity of the arbitral process against abuse.[123]

D. Consequences for Tribunal Composition, Party Autonomy, and Institutional Design

The Ukraine v. Russia case demonstrates that arbitrator challenges – while rare in inter-State arbitration – are not merely theoretical possibilities but events with profound practical consequences.[124] The removal and replacement of both the tribunal's president and another member(s) during ongoing proceedings resulted in a temporary reconstitution of the tribunal, necessitating new appointments and, by extension, a recalibration of party strategy and procedural expectations.[125]

For States, this experience is likely to result in a more cautious and strategic approach to the appointment process. Parties may invest additional effort in pre-appointment vetting, thoroughly reviewing candidates' past and present affiliations, public statements, and institutional memberships for any potential sources of controversy. In some cases, parties may even negotiate for advance exclusion or mutual disqualification of specific individuals, seeking to minimize the risk of mid-proceeding upheaval.[126]

Where vacancies do arise and parties are unable to agree on replacements, the role of default appointment of authorities becomes crucial. This case thus underscores the importance of robust institutional mechanisms for managing tribunal composition, ensuring procedural continuity even in the face of unexpected disruptions.[127] In a broader sense, the Ukraine v. Russia decision is likely to prompt both arbitral institutions and States to revisit and refine their rules regarding disclosure, challenge procedures, and the handling of arbitrator replacements.[128] This evolution will be especially pertinent in high-stakes or

122 Putra & Yassine, *supra* note 111; Iryna, *supra* note 112; Ali & Sousa, *supra* note 113.

123 Ali & Sousa, *supra* note 113.

124 *Id*.

125 Putra & Yassine, *supra* note 111; Iryna, *supra* note 112; Ali & Sousa, *supra* note 113.

126 *Id*.

127 Ali & Sousa, *supra* note 113.

128 *Id*.

politically charged disputes, where the legitimacy of the arbitral process depends not only on the substantive merits of the case, but also on the perceived fairness and stability of its procedural framework.[129]

The case also highlights the critical balance between party autonomy and the need for institutional safeguards.[130] While States value their ability to select arbitrators of their choosing, the potential for challenges and replacements means that party autonomy must be exercised within an institutional context capable of responding effectively to unforeseen developments.

E. Precedential Value and Future Development of International Arbitral Jurisprudence

Perhaps the most enduring impact of the Ukraine v. Russia decision lies in its contribution to the "common law" of international arbitration.[131] The publication of both the decision and the dissent represents a significant step toward greater transparency in inter-State arbitration, where procedural rulings have traditionally been kept confidential or unpublished.

By providing the reasoning behind the standards for impartiality, disclosure, and challenge procedures in detail, the case set a valuable precedent for future tribunals, parties, and practitioners. The majority's expansive, context-sensitive approach to bias will be cited by those seeking to broaden the grounds for disqualification, while the dissent's emphasis on judicial restraint and formal legal analysis will serve as a counterweight to expansive disqualification rules in defending arbitrators whose connections to a dispute are less direct.[132]

This dual legacy is likely to influence the ongoing development of institutional rules and guidelines. Organizations such as the ICSID, the United Nations Commission on International Trade Law (UNCITRAL), and the PCA may look to Ukraine v. Russia as a reference point in updating their standards for arbitrator conduct, disclosure, and challenge.[133] The case also provides a touchstone for future debates regarding the limits of academic freedom, the scope of impartiality, and the balance between transparency and expertise in international dispute resolution.[134]

129 *Id*.

130 Tariq Alhasan, *Linguistic Proficiency Disclosures in International Arbitration: Enhancing Fairness and Efficiency*, (online) Int'l J. Semiotics L. 1805 (2025).

131 Ukraine v. Russia [Decision on Challenges].

132 *Id*.

133 *Id*.

134 Alhasan, *supra* note 130.

Moreover, the decision's impact is not confined to procedural matters. By addressing the intersection of arbitrator conduct, party perceptions, and the requirements of due process, Ukraine v. Russia offers broader lessons for the legitimacy and effectiveness of international adjudication.[135] It affirms that the integrity of the process is as vital as the correctness of the outcome and that maintaining the confidence of States and the international community requires constant vigilance, adaptation, and openness.[136]

Finally, as more States engage in inter-State arbitration on contentious, high-profile issues, the lessons of Ukraine v. Russia are likely to resonate far beyond the immediate context of the case.[137] Future disputes will inevitably grapple with similar questions about disclosure, impartiality, and procedural strategy. By providing a comprehensive and transparent account of these challenges, the case not only shapes the evolving practice of international arbitration but also reinforces the foundational principles of fairness, legitimacy, and accountability that underpin the international legal order.[138]

VII. Conclusion

The decision on challenges in Ukraine v. Russia is a landmark in inter-State arbitration practice.[139] It showcases the tribunal's effort to uphold judicial integrity by removing arbitrators over the appearance of bias, even at the cost of interfering with party appointments and delaying proceedings.[140] At the same time, the strong dissent of Christopher Greenwood highlights the need for restraint, cautioning against lowering the threshold for impartiality in a manner that might exclude many eminent arbitrators. The tension between these views will inform the selection and behavior of arbitrators in future cases. Ultimately, this case reinforces a core message: in international adjudication, justice must not only be done but must be seen to be done. [Emphasis added] In pursuing that

135 *Id*.

136 *Id*.

137 *Id*.

138 Mehboob Mohaddas et al., *AI, Transparency, and Fairness in International Arbitration: Rethinking Disclosure and Due Process in the Age of Algorithmic Adjudication*, 4(2) Acad. Int'l J. Soc. Sci. 1287 (2025).

139 Ukraine v. Russia [Decision on Challenges] & [Procedural Order No. 8].

140 *Id*.

ideal, however, one must carefully distinguish genuine partiality from a mere appearance of predisposition that does not truly compromise a fair hearing.[141]

The Ukraine v Russia award may herald a shift toward heightened scrutiny of arbitrator affiliations and extrajudicial expression in inter-State proceedings.[142] While its intent was to preserve neutrality and integrity, the ruling risks chilling legitimate academic discourse and limiting the pool of qualified arbitrators. Greenwood's dissent is an important counterweight, reminding the community value of institutional restraint and the dangers of overextending impartiality standards.[143]

Future jurisprudence must tackle this tension, namely how to safeguard the appearance of justice, while ensuring that tribunals remain composed of jurists who are both expert and independent. This case should prompt arbitral institutions, particularly under the UNCLOS and the ICSID, to revisit guidelines on disclosure, timing, and professional expression. As State-to-State arbitration becomes more frequent and politically charged, the legacy of the PCA Case No. 2019-28 will shape the contours of fair process in international adjudication.

Received: August 15, 2025
Modified: September 15, 2025
Accepted: November 1, 2025

141 *See e.g.*, Bing Bing Jia, *The Statute of the International Court of Justice: A Commentary*, 5(3) Chinese J. Int'l L. 793-6 (2006).

142 *Id*.

143 Ukraine v. Russia [Decision on Challenges] & [Procedural Order No. 8].