INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
WASHINGTON, D.C.

IN THE ARBITRATION PROCEEDING BETWEEN

CONOCOPHILLIPS PETROZUATA B.V.
CONOCOPHILLIPS HAMACA B.V.
CONOCOPHILLIPS GULF OF PARIA B.V.
CLAIMANTS

and

BOLIVARIAN REPUBLIC OF VENEZUELA
RESPONDENT

ICSID Case No. ARB/07/30

DECISION ON THE PROPOSAL TO DISQUALIFY A MAJORITY OF THE TRIBUNAL

CHAIRMAN OF THE ADMINISTRATIVE COUNCIL
Dr. Jim Yong Kim

SECRETARY OF THE TRIBUNAL
Mr. Gonzalo Flores

Date: July 1, 2015

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A. THE PARTIES

1. The Claimants are ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V., three companies incorporated under the laws of The Netherlands ("**ConocoPhillips**" or the "**Claimants**").

2. The Respondent is the Bolivarian Republic of Venezuela ("**Venezuela**" or the "**Respondent**").

B. PROCEDURAL HISTORY

3. On November 2, 2007, the Claimants submitted a Request for Arbitration against Venezuela to the International Centre for Settlement of Investment Disputes ("**ICSID**" or the "**Centre**") pursuant to Article 36 of the ICSID Convention. On December 13, 2007, the Secretary-General of ICSID registered the Request for Arbitration in accordance with Article 36(3) of the ICSID Convention.

4. The Tribunal was constituted on July 23, 2008. Its members were Judge Kenneth Keith, a national of New Zealand, appointed as President pursuant to Article 38 of the ICSID Convention; Mr. L. Yves Fortier, a national of Canada, appointed by the Claimants; and Sir Ian Brownlie, a national of the United Kingdom, appointed by the Respondent. The Tribunal was reconstituted on February 1, 2010, with Prof. Georges Abi-Saab, a national of Egypt, appointed by the Respondent following Sir Ian Brownlie's death.

5. On October 5, 2011, the Respondent proposed the disqualification of Mr. Fortier following his disclosure that Norton Rose OR LLP ("**Norton Rose**"), the law firm in which he was then a partner, proposed to merge with Macleod Dixon LLP, effective January 1, 2012 ("**First Proposal for Disqualification**"). On October 18, 2011, Mr. Fortier submitted a disclosure (the "**October 2011 disclosure**") in which he informed Judge Keith, Prof. Abi-Saab and the parties that he was resigning from Norton Rose to establish his own arbitration practice.

6. Each party filed written submissions addressing the First Proposal for Disqualification and Mr. Fortier furnished explanations as envisaged by ICSID Arbitration Rule 9(3). Judge Keith and

Prof. Abi-Saab rejected the First Proposal for Disqualification on February 27, 2012 ("**Decision on the Proposal to Disqualify L. Yves Fortier, QC, Arbitrator**").

7. On September 3, 2013, the Tribunal issued a majority **Decision on Jurisdiction and the Merits**. It found the Respondent in breach of its international obligation to negotiate compensation in good faith for its taking of ConocoPhillips' assets in three oil projects in Venezuela. The Tribunal rejected all other claims submitted by the Claimants. Prof. Abi-Saab dissented from this Decision, but did not provide the text of his dissenting opinion to the ICSID Secretariat until February 19, 2015 ("**Prof. Abi-Saab's Dissenting Opinion of February 19, 2015**").[1]

8. On September 8, 2013, the Respondent requested a clarification and further explanations from the Tribunal regarding certain findings in the Decision on Jurisdiction and the Merits. On October 1, 2013, the Tribunal fixed a schedule for written submissions on this request and the parties simultaneously filed briefs on October 28 and November 25, 2013.

9. On March 10, 2014, the Tribunal issued a majority decision rejecting the Respondent's request for clarification and further explanations ("**Decision on Respondent's Request for Reconsideration**"). Prof. Abi-Saab appended a dissenting opinion to the Decision on the Respondents' Request for Reconsideration ("**Prof. Abi-Saab's Dissenting Opinion of March 10, 2014**").

10. On March 11, 2014, Venezuela proposed the disqualification of Judge Keith and Mr. Fortier based on their alleged general attitude toward the Respondent ("**Second Proposal for Disqualification**"). The parties filed written submissions and Judge Keith and Mr. Fortier furnished explanations. On May 5, 2014, the Chairman of the ICSID Administrative Council rejected the Respondent's Second Proposal for Disqualification ("**Decision on the Proposal to Disqualify a Majority of the Tribunal**").

11. On May 19, 2014, the Claimants submitted their Memorial on Quantum of damages. On August 18, 2014, the Respondent submitted its Counter-Memorial on Quantum. On October 13, 2014, the Claimants submitted their Reply on Quantum and on January 7, 2015, the Respondent

[1] See ¶16 *infra*.

filed its Rejoinder on Quantum. A hearing on quantum was scheduled to be held in Washington D.C. in the week of April 13, 2015.

12. On January 29, 2015, the Respondent sent the Tribunal two articles published in Global Arbitration Review on January 27, 2015. These articles highlighted the participation of Mr. Martin J. Valasek, a Norton Rose partner, as the tribunal assistant in the Yukos v. Russian Federation arbitrations (the "**Yukos arbitrations**") presided over by Mr. Fortier. The Respondent asked Mr. Fortier to provide further explanations as to the extent of his relationship with Norton Rose since January 1, 2012.

13. Mr. Fortier replied to Respondent's request on February 3, 2015, as follows:

> *[I] have seen your letter of 29 January 2015 addressed to all members of this ICSID Tribunal.*
> *Nothing has changed since 31 December 2011 when I resigned as a partner of Norton Rose OR LLP. I ceased then to have any professional relationship with the firm (now Norton Rose Fulbright).*
> *As I wrote to my co-arbitrators on 18 October 2011, there were then members of Norton Rose OR LLP who assisted me in certain files in which I served as an arbitrator (principally as Chairman) and whom I have continued to call upon for assistance after 1 January 2012.*
> *Since 1 January 2012, I have pursued my career independently as an arbitrator and mediator in premises which I lease from Ivanhoé Cambridge at Suite 2822 at Place Ville Marie in Montreal. I am also a door tenant at 20 Essex Street in London and arbitrator-member of Arbitration Place in Toronto.*

14. On February 6, 2015, the Respondent proposed the disqualification of Mr. Fortier, alleging that he had an ongoing relationship with Norton Rose which demonstrated his lack of independence and impartiality in this case ("**Proposal**"). On the same date, the Centre informed the parties that the proceeding was suspended until the Proposal was decided, pursuant to ICSID Arbitration Rule 9(6).

15. On February 9, 2015, the Claimants replied to the Respondent's Proposal. On February 10, 2015, the Respondent submitted comments on the Claimants' Reply and on February 12, 2015, the Claimants replied to the Respondent's February 10 comments. On February 13, 2015, Mr. Fortier furnished explanations on the Proposal pursuant to ICSID Arbitration Rule 9(3). Both parties submitted additional comments on the Proposal on February 16, 2015.

16. On February 19, 2015, Prof. Abi-Saab submitted the text of his Dissenting Opinion on the 2013 Decision on Jurisdiction and Merits to the ICSID Secretariat.

17. On February 20, 2015, Prof. Abi-Saab submitted his resignation from the Tribunal with immediate effect. Copies of Prof. Abi-Saab's Dissenting Opinion and Letter of Resignation were transmitted to the parties, Judge Keith and Mr. Fortier on that same date.

18. At the time of Prof. Abi-Saab's resignation, he and Judge Keith had not yet decided the Respondent's pending proposal to disqualify Mr. Fortier.

19. On February 21, 2015, following Prof. Abi-Saab's resignation, the Claimants asked ICSID to submit the proposal for disqualification to the Chairman of the Administrative Council for decision. In addition, the Claimants inquired whether the Tribunal had consented to Prof. Abi-Saab's resignation for purposes of Article 56 of the ICSID Convention.

20. The Respondent opposed these requests by email of February 23, 2015, indicating that it expected to appoint a replacement arbitrator within 30 days. On the same day, the parties were invited to simultaneously file observations concerning Prof. Abi-Saab's resignation by February 24, 2015. The Respondent replied, asking the Centre to explain the purpose and basis of this invitation.

21. On February 24, 2015, the parties were advised that the invitation to comment on Prof. Abi-Saab's resignation sought to ensure that both parties were offered an equal opportunity to state their views on this matter and that the President of the Tribunal considered that such observations could assist the Tribunal. The parties were asked to submit any such observations by noon on February 25, 2015. The Respondent replied by email on February 24, 2015, reiterating its view that there was no basis for the parties to comment on this matter.

22. On February 25, 2015, both parties submitted their position concerning Prof. Abi-Saab's resignation.

23. By email of February 26, 2015, the Respondent requested an opportunity to respond to the Claimants' comments of February 25, 2015. The Claimants objected to this request on the basis that both parties had been given an equal opportunity to file comments simultaneously and had availed themselves of this opportunity.

24. By further email of February 26, 2015, the Respondent provided additional observations on the procedure to be followed.

25. By letter of March 4, 2015, the Secretary of the Tribunal informed the parties that Judge Keith and Mr. Fortier had considered Prof. Abi-Saab's resignation and decided not to consent to it. The Secretary's letter conveyed the following explanation from Judge Keith:

> *The two arbitrators, following the resignation of Professor Abi-Saab, have considered the matter of their consent to the resignation in terms of Article 56(3) of the ICSID Convention and Rule 8(2) of the Arbitration Rules. They have also considered the comments on that matter submitted by the Parties.*
>
> *Over a very lengthy period the two Arbitrators, particularly the President, have urged Professor Abi-Saab to complete his dissent and then, as he had himself indicated, to resign from the Tribunal so that the Respondent could appoint a replacement arbitrator. The President kept stressing the urgency of the matter and Professor Abi-Saab in mid-November, while saying that he still expected to complete the dissent by the end of that month, indicated that if he had not completed by the end of the year, he would have to resign in any event. In the course of those exchanges, the two arbitrators plainly did consent to the proposed resignation.*
>
> *The two arbitrators did not however consent to a resignation in late February when the quantum hearing was only seven weeks away and a challenge to one of the arbitrators was pending.*

26. The letter of March 4, 2015 also informed the parties that, in these circumstances, the Chairman of the Administrative Council would proceed to appoint an arbitrator to fill the vacancy caused by Prof. Abi-Saab's resignation pursuant to Article 56(3) of the ICSID Convention and ICSID Arbitration Rule 11(2)(a). The letter also advised that the dates scheduled for the hearing

on quantum had been vacated, and that once the vacancy was filled, the Proposal would be addressed by Judge Keith and the arbitrator appointed to replace Prof. Abi-Saab.

27. On March 4, 2015, the Respondent objected to the Chairman filling the vacancy on the Tribunal. Noting the reasoning in the decision, the Respondent requested copies of any documents reflecting the consent of Judge Keith and Mr. Fortier to Prof. Abi-Saab's proposed resignation. The Respondent also asked that Prof. Abi-Saab be called to provide his understanding of prior exchanges with his co-arbitrators concerning his proposed resignation. Finally, the Respondent asked Judge Keith for clarification of the decision not to consent to Prof. Abi-Saab's resignation.

28. The parties submitted further correspondence on this matter on March 6, 7, 12, 13 and 14, 2015. The Respondent also reiterated its March 4, 2015 requests by email of March 17, 2015 addressed directly to Judge Keith, Mr. Fortier and Prof. Abi-Saab.

29. On March 23, 2015, Judge Keith and Mr. Fortier advised the parties that the correspondence requested by the Respondent could not be released as it was protected by the confidentiality of the internal deliberations of the Tribunal.

30. By letter of March 25, 2015, Venezuela amended its proposal for disqualification by adding a request to disqualify both Judge Keith and Mr. Fortier on the basis of their general negative attitude toward the Respondent.

31. On March 26, 2015, the Centre set a schedule for the parties' further submissions on the Proposal.

32. The Respondent submitted its arguments on April 2, 2015 ("**Respondent's Submission of April 2, 2015**"). Venezuela also requested (a) an in-person hearing on the Proposal; and (b) a recommendation from a third party on the Proposal. The Claimants submitted a Reply on April 9, 2015 ("**Claimants' Reply of April 9, 2015**").

33. On April 16, 2015, Judge Keith and Mr. Fortier furnished explanations pursuant to ICSID Arbitration Rule 9(3).

34. On April 23, 2015, both parties submitted additional comments on the Proposal.

35. In addition to the submissions filed by the parties pursuant to the schedule, the Respondent submitted emails concerning the Proposal on April 29, May 27 and June 1, 3, 16 and 18, 2015, and the Claimants submitted a letter on June 3, 2015. Mr. Fortier furnished additional explanations on June 1 and 18, 2015.

C. OVERVIEW

36. Venezuela has applied to disqualify Judge Keith and Mr. Fortier on the basis of their lack of independence and impartiality, citing their negative attitude toward the Respondent, in particular in connection with the events surrounding Prof. Abi-Saab's resignation.

37. Venezuela also seeks to disqualify Mr. Fortier on the basis of his lack of independence and impartiality, citing his ongoing relationship with Norton Rose. The parties' arguments are described below.

1. VENEZUELA'S ARGUMENTS CONCERNING THE ALLEGED NEGATIVE ATTITUDE OF JUDGE KEITH AND MR. FORTIER

38. Venezuela's arguments on the proposal to disqualify Judge Keith and Mr. Fortier were set forth in its submissions of March 25 and April 2 and 23, 2015.

39. Venezuela claims that the events surrounding the resignation of Prof. Abi-Saab demonstrate that Judge Keith and Mr. Fortier lack the requisite independence and impartiality to continue serving on this Tribunal.[2]

40. Venezuela claims that Prof. Abi-Saab confirmed that Judge Keith and Mr. Fortier had a negative attitude toward the Respondent in his Dissenting Opinion of March 10, 2014 and in his Dissenting Opinion of February 19, 2015.[3] It submits that Prof. Abi-Saab's observations are an

[2] Respondent's Submission of April 2, 2015 ¶28.

[3] Respondent's Submission of April 2, 2015 ¶28. See also Respondent's Additional Comments of April 23, 2015 ¶7.

"undeniable indication that something was very wrong in the manner in which the Decision on Jurisdiction and Merits was reached."[4]

41. Venezuela further alleges that this predisposition led Judge Keith and Mr. Fortier to advance the Claimants' interests throughout the proceedings, to rely almost exclusively and uncritically on the Claimants' affirmations and representations, and to systematically discredit and ignore the Respondent's evidence.[5]

42. Venezuela states that Judge Keith and Mr. Fortier's refusal to consent to Prof. Abi-Saab's resignation was a "shocking decision", lacking any "rational explanation" other than "retaliation against Respondent."[6] Venezuela further claims that "[i]t is universally recognized that the purpose of [Article 56 of the ICSID Convention] is to prevent a party and its party-appointed arbitrator from obstructing or frustrating the proceeding by orchestrating a resignation; it is not to penalize a party be [sic] depriving it of the right to appoint a replacement arbitrator when the arbitrator it appointed resigns for serious health reasons." [7]

43. In Venezuela's submission, the partiality of the challenged arbitrators is demonstrated by the fact that such decision: "(i) was taken [together with Mr. Fortier] when the entire proceeding was suspended and when Mr. Fortier could not have had any role to play since he was already challenged; (ii) was taken after Judge Keith and Mr. Fortier had 'plainly' consented to Prof. Abi-Saab's resignation; and (iii) was unprecedented, given Prof. Abi-Saab's health issues, which were well known to Judge Keith, Mr. Fortier and ICSID."[8] Venezuela also asserts that the challenged arbitrators did not address these points in their communications of March 4 and 23, 2015.[9]

[4] Respondent's Submission of April 2, 2015 ¶31.
[5] Respondent's Submission of April 2, 2015 ¶30, quoting from Prof. Abi-Saab's Dissenting Opinion of March 10, 2014, ¶¶16, 22.
[6] Respondent's Submission of April 2, 2015 ¶3.
[7] Respondent's Submission of April 2, 2015 ¶33.
[8] Respondent's Additional Comments of April 23, 2015 ¶2. See also Respondent's Submission of April 2, 2015 ¶40,
[9] Respondent's Additional Comments of April 23, 2015 ¶4.

44. Venezuela concludes that any third party would have "justifiable doubts" as to the impartiality of the challenged arbitrators in this case.[10]

2. CLAIMANTS' REPLY

45. The Claimants' arguments on the proposal to disqualify Judge Keith and Mr. Fortier were set forth in their submissions of April 9 and 23, 2015.

46. The Claimants argue that the fact that a ruling is adverse to a party is not a ground for disqualification. The Claimants further contend that even if the mere issuance of an adverse decision could justify disqualification, Venezuela would have had to prove that no unbiased arbitrator could have refused to consent to Prof. Abi-Saab's resignation. In the Claimants' view, Venezuela has not met this burden.[11]

47. The Claimants state that the relevant circumstances had changed by the time Prof. Abi-Saab resigned on February 20, 2015, and that Judge Keith and Mr. Fortier had valid reasons on March 4, 2015 to refuse consent to the resignation of Prof. Abi-Saab.[12]

48. The Claimants challenge Venezuela's suggestion that consent to resign can be withheld only due to collusion between the arbitrator and its appointing party. They argue that Article 56(3) of the ICSID Convention is not limited to this single fact situation.[13]

49. The Claimants maintain that Venezuela's complaints about procedural aspects of the replacement of Prof. Abi-Saab are wrong in law and irrelevant to the independence and impartiality of Judge Keith and Mr. Fortier. In addition, they note that Venezuela's approach creates a "Catch-22" situation that would place the proceeding in permanent suspension.[14]

50. The Claimants note that even if Venezuela's position on Article 56(3) of the ICSID Convention were correct, the outcome would have been the same: in either case, there would be

[10] Respondent's Submission of April 2, 2015 ¶39.
[11] Claimants' Reply of April 9, 2015 ¶¶16-20.
[12] Claimants' Reply of April 9, 2015 ¶24.
[13] Claimants' Reply of April 9, 2015 ¶31.
[14] Claimants' Reply of April 9, 2015 ¶46.

no consent to the resignation of Prof. Abi-Saab and the Chairman would have been required to fill the vacancy on the Tribunal.[15]

51. Finally, the Claimants note that most of the facts relied upon by Venezuela in this Proposal were already addressed in the First and Second Proposals and that the First and Second Proposals were rejected.[16]

3. VENEZUELA'S ARGUMENTS CONCERNING MR. FORTIER'S ALLEGED RELATIONSHIP WITH NORTON ROSE

52. Venezuela's arguments on the proposal to disqualify Mr. Fortier on the basis of his alleged ongoing relationship with Norton Rose were set forth in its submissions of February 6, 10 and 16, April 2 and 23 and June 1, 3, 16 and 18, 2015.

53. According to Venezuela, Mr. Fortier maintained professional and emotional ties with Norton Rose after his resignation in 2011. It cites his continuing contact with Norton Rose attorneys, the fact that three Norton Rose attorneys have acted as tribunal assistants for Mr. Fortier in other cases and the proximity of Mr. Fortier's office to Norton Rose offices in Montreal.[17]

54. Venezuela argues that Mr. Fortier's October 2011 disclosure that he might continue to work with certain attorneys already appointed as administrative assistants in ongoing arbitrations is not "a license to maintain an ongoing, substantive professional relationship with Norton Rose senior attorneys, including in cases involving the same issues as are at issue here."[18]

55. Venezuela further states that Mr. Valasek's participation in the Yukos arbitrations "apparently went beyond the role of an administrative secretary and was argued by Russia to be the equivalent of participation in the deliberations of the tribunal as a 'fourth arbitrator'".[19] It also

[15] Claimants' Reply of April 9, 2015 ¶45.
[16] Claimants' Reply of April 9, 2015 ¶¶47-54.
[17] Respondent's Submission of February 6, 2015, pages 2-4; Respondent's letter of February 10, 2015, page 2. Respondent's letter of February 16, 2015, pages 2-6; Respondent's Submission of April 2, 2015 ¶¶3, 15-22. Respondent's Submission of April 23, 2015 ¶¶9-17; Respondent's emails of June 1, 3, 16 and 18, 2015.
[18] Respondent's Submission of April 2, 2015 ¶14.
[19] Respondent's Submission of April 2, 2015 ¶15.

claims that Mr. Valasek's role in the Yukos arbitrations "did not fit with the description of administrative assistant" to which Mr. Fortier had referred in his October 2011 disclosure.[20] Venezuela rejects Mr. Fortier's February 13, 2015 explanations that the role of tribunal assistant was "an obvious example" of the roles covered by his disclosure.[21]

4. CLAIMANTS' REPLY

56. The Claimants' arguments on the proposal to disqualify Mr. Fortier on the basis of his alleged ongoing relationship with Norton Rose were set forth in their submissions of February 9, 12 and 16, April 9 and 23 and June 3, 2015.

57. The Claimants argue that Russia's effort to vacate the Yukos awards on the basis that Mr. Fortier's tribunal assistant exceeded the proper scope of his role is irrelevant to Mr. Fortier's independence and impartiality in this proceeding.[22]

58. The Claimants argue that Venezuela did not object to Mr. Fortier's October 2011 disclosure at the relevant time,[23] and that Mr. Valasek's function in the Yukos arbitrations falls within the scope of the October 2011 disclosure.

59. The Claimants also argue that Mr. Valasek's compensation as a tribunal assistant in the Yukos arbitrations is not evidence of any improper professional relationship between Mr. Fortier and Norton Rose and that "Venezuela has failed to explain how Mr. Valasek's service *to the tribunal* in an unrelated case could prove that Maître Fortier lacks independence or impartiality in this case"[24] (emphasis in the original).

[20] Respondent's Submission of April 2, 2015 ¶18. See also Respondent's Submission of February 6, 2015, page 3.
[21] Respondent's Submission of April 2, 2015 ¶18.
[22] Claimants' Letter to the Tribunal of February 9, 2015, page 2; See also Claimants' Reply of April 9, 2015 ¶¶9-10.
[23] Claimants' Letter to the Tribunal of February 9, 2015, pages 3-4.
[24] Claimants' Letter to the Tribunal of February 12, 2015, page 2; See also Claimants' Letter to the Tribunal of February 9, 2015, page 5.

D. ARBITRATORS' EXPLANATIONS

1. Explanations furnished by Mr. L. Yves Fortier

60. Mr. Fortier furnished explanations pursuant to ICSID Arbitration Rule 9(3) on February 13, 2015 (Annex A), on April 16, 2015 (Annex B), and on June 1 and 18, 2015 (Annex C).

2. Explanations furnished by Judge Kenneth Keith

61. Judge Keith furnished explanations pursuant to ICSID Arbitration Rule 9(3) on April 16, 2015 as follows:

> *In accordance with the schedule set by the ICSID Secretariat, I provide the following explanation relating to the Respondent's new proposal to disqualify Mr Fortier and myself.*
>
> *The Respondent, at the end of its Submission, concludes that I should be disqualified from continuing to act as an arbitrator in the present case because I have, together Mr Fortier, exhibited an attitude towards Respondent that in the reasonable evaluation of a third party would give rise to the appearance of a lack of the requisite impartiality (p 53).*
>
> *I have only this to say. It is over thirty years ago since I first took a judicial oath to do right to all manner of people according the laws and usages of the particular jurisdiction, without fear or favour, affection or ill will (the terms of the New Zealand oath, earlier Western Samoa, the Cook Islands and Niue and later in Fiji all to similar effect). I have made comparable oaths and solemn declarations to act impartially and conscientiously in the Judicial Committee of the Privy Council, arbitral tribunals and the International Court of Justice. I have always done my very best to meet those serious responsibilities. That is also true in the present case.*

E. DECISION BY THE CHAIRMAN

1. Timeliness

62. Proposals to disqualify an arbitrator under the ICSID Convention and Rules must be submitted promptly. Arbitration Rule 9(1) reads as follows:

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

63. The ICSID Convention and Rules do not specify a number of days within which a proposal for disqualification must be filed. Accordingly, the timeliness of a proposal must be determined on a case-by-case basis.[25]

64. The parties do not dispute the timeliness of filing the proposal to disqualify Judge Keith and Mr. Fortier based on the circumstances surrounding Prof. Abi-Saab's resignation. In any event, this aspect of the Proposal was clearly timely-filed for the purposes of ICSID Arbitration Rule 9(1).

65. The Claimants argue that the proposal to disqualify Mr. Fortier based on his relationship with certain members of Norton Rose acting as tribunal assistants, including Mr. Valasek, is untimely.[26]

66. The fact that certain members of Norton Rose were acting as tribunal assistant in arbitrations presided over by Mr. Fortier has been known since 2011 and was included in his disclosure of October 2011. This was raised in 2011 in the First Proposal, which proposal was rejected by Judge Keith and Prof. Abi-Saab. The Respondent has provided no new facts in this respect. Accordingly, to the extent the current Proposal is based on this assertion, it is untimely and is rejected.

67. The only new information relating to Mr Fortier's relationship with Norton Rose attorneys stems from two Global Arbitration Review articles published in January 2015. This information suggests that Mr. Valasek exceeded the proper scope of a tribunal assistant in the Yukos arbitrations, a ground advanced by Russia in the Yukos set-aside application. To the extent that

[25] See *Fábrica de Vidrios Los Andes, C.A. and Owens-Illinois de Venezuela, C.A. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/12/21), Decision on the Proposal to Disqualify a Majority of the Tribunal (June 16, 2015) ¶40 ("**Favianca**").

[26] Claimants' Reply of April 9, 2015 ¶52.

this Proposal is based on this new information, it is timely-filed and is addressed in paragraphs 94 and 95 of this Decision.

2. Request for Recommendation

68. Venezuela has asked the Chairman to request a recommendation from a third party on the proposal to disqualify Judge Keith and Mr. Fortier. The bases for this request are: (a) that Mr. Fortier is currently an External Member and the Chair of the World Bank Group Sanctions Board; and (b) ICSID's involvement in some of the events giving rise to the disqualification proposal.[27] The Claimants have opposed this request.[28]

69. Article 58 of the ICSID Convention states that the decision on a proposal to disqualify the majority of arbitrators shall be taken by the Chairman of the ICSID Administrative Council.

70. While the Chairman has discretion to request a recommendation on a proposal to disqualify an arbitrator, he has only done so on rare occasions in the past.[29] In all cases, the final decision is solely that of the Chairman.[30]

71. A request for a recommendation must be justified by the specific circumstances of the case at issue. As to circumstance (a) above, Mr. Fortier has never been and is not currently a staff member of the World Bank Group. As an External Member and Chair of the World Bank Group Sanctions Board, he is an independent decision-maker.

72. As to circumstance (b) above, ICSID was not involved in the events giving rise to the disqualification proposal other than to act as an impartial institution administering the case under the ICSID Convention and Arbitration Rules. The Convention and Rules do not address the

[27] Respondent's Submission of April 2, 2015 ¶6.

[28] Claimants' Reply of April 9, 2015 ¶¶55-64.

[29] See the cases cited by the Respondent and the Claimants in: Respondent's Submission of April 2, 2015, ¶ 5 foonotes 6-7 and Claimants' Reply of April 9, 2015 ¶58 footnote 55.

[30] See, *e.g.*, *Abaclat and others v. Argentine Republic* (ICSID Case No. ARB/07/5), Decision on the Proposal to Disqualify a Majority of the Tribunal (February 4, 2014) ¶¶64-66 ("**Abaclat**"); *Repsol, S.A. and Repsol Butano, S.A. v. Argentine Republic* (ICSID Case No. ARB/12/38), Decision on the Proposal to Disqualify a Majority of the Tribunal (December 13, 2013) ¶67 ("**Repsol**").

situation that arose in this case where an arbitrator resigned without deciding the disqualification proposal that was pending before him.

73. The parties did not agree on the procedure to be followed and presented inconsistent solutions. The Respondent stated that "…the reality is that we are in a situation that is unprecedented and beyond the scope of the rules."[31] The Respondent's solution was that "the first order of business" was that it appoint the replacement for Prof. Abi-Saab and then the pending disqualification could be decided by Judge Keith and the Respondent's appointee.[32] The Claimants proposed an incompatible course of action. They stated that "…as a first and essential step…[t]he only defensible and practical approach"[33] was to have the Chairman decide the pending challenge of Mr. Fortier and then have the Chairman appoint the replacement for Prof. Abi-Saab.[34]

74. In light of the unique situation that had arisen, and the parties' failure to agree on how to proceed, ICSID submitted the matter to the Tribunal. It was then for the Tribunal to determine whether it had authority to address the resignation, and if so, whether it would accept the resignation.

75. The circumstances raised by the Respondent do not justify a request for a third party recommendation. The Chairman therefore rejects this request.

3. Request for Oral Hearing

76. The Respondent has asked the Chairman of the Administrative Council to hold an in-person hearing on the Proposal.[35] The Claimants have not advanced a position in this regard.

77. The parties have been given a full opportunity to argue their positions with respect to the Proposal and they have fully availed themselves of this opportunity. The parties have comprehensively briefed the Chairman on the relevant facts and law, with the Claimants

[31] Respondent's e-mail of February 26, 2015.
[32] Respondent's letter of February 23, 2015.
[33] Claimants' letter of February 21, 2015.
[34] Claimants' letter of February 25, 2015 pp. 1-2.
[35] Respondent's Submission of April 2, 2015 ¶42; Respondent's Submission of April 23, 2015 ¶20. Respondent's emails of April 29, May 27 and June 18, 2015.

submitting 11 communications and the Respondent submitting 26 communications from February 6 through June 18, 2015. In the circumstances, an oral hearing is not required to determine this proposal and the Chairman declines this request.

4. Merits

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

> *A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14.*

79. Article 14(1) of the ICSID Convention provides:

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

80. While the English version of Article 14 of the ICSID Convention refers to "*independent judgment*," and the French version to "*toute garantie d'indépendance dans l'exercice de leurs fonctions*" (guaranteed independence in exercising their functions), the Spanish version requires "*imparcialidad de juicio*" (impartiality of judgment). Given that all three versions are equally authentic, it is accepted that arbitrators must be both impartial and independent.[36]

[36] The parties agree on this point: Respondent's Submission of April 2, 2015 ¶2; Claimants' Reply of April 9, 2015 ¶16. So does ICSID jurisprudence: *Burlington Resources Inc. v. Republic of Ecuador* (ICSID Case No. ARB/08/5), Decision on the Proposal for Disqualification of Professor Francisco Orrego (December 13, 2013) ¶65 ("**Burlington**"); *Abaclat supra* note 30 ¶74; Blue Bank International & Trust (Barbados) Ltd. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/20), Decision on the Parties'Proposal to Disqualify a Majority of the Tribunal (November 12, 2013) ¶58 ("**Blue Bank**"), *Repsol supra* note 30 ¶70; *Suez Sociedad General de Aguas de Barcelona S.A., and InterAguas Servicios Integrales del Agua S.A. v. Argentine Republic* (ICSID Case No. ARB/03/17) and *Suez Sociedad General de Aguas de Barcelona S.A. and Vivendi Universal S.A. v. Argentine Republic* (ICSID Case No. ARB/03/19), Decision on the Proposal for the Disqualification of a Member of the Arbitral Tribunal (October 22, 2007) (together "**Suez**") ¶28; *OPIC Karimum Corporation v. Bolivarian Republic Venezuela* (ICSID Case No ARB/10/14), Decision on the Proposal to Disqualify Professor Philippe Sands, Arbitrator (May 5, 2011) ¶44; *Getma International and others v. Republic of Guinea* (ICSID Case No. ARB/11/29), Decision on the Proposal for Disqualification of Mr. Bernardo M. Cremades, Arbitrator (June 28, 2012) ¶59; *ConocoPhillips Company et al. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/07/30), Decision on the Proposal to Disqualify L. Yves Fortier, Q.C., Arbitrator (February 27, 2012) ¶54; *Alpha Projektholding GmbH v. Ukraine* (ICSID Case No. ARB/07/16), Decision on Respondent's Proposal to Disqualify Arbitrator Dr. Yoram Turbowicz (March 19, 2010)

81. Impartiality refers to the absence of bias or predisposition towards a party. Independence is characterized by the absence of external control. Independence and impartiality both "protect parties against arbitrators being influenced by factors other than those related to the merits of the case."[37]

82. A number of decisions have concluded that the word "manifest" in Article 57 of the Convention means "evident" or "obvious,"[38] and that it relates to the ease with which the alleged lack of the required qualities can be perceived.[39]

83. Articles 57 and 14(1) of the ICSID Convention do not require proof of actual dependence or bias; rather, it is sufficient to establish the appearance of dependence or bias.[40]

84. The legal standard applied to a proposal to disqualify an arbitrator is an "objective standard based on a reasonable evaluation of the evidence by a third party." As a consequence, the subjective belief of the party proposing the disqualification is not enough to satisfy the requirements of the Convention.[41]

85. The Respondent claims that Judge Keith and Mr. Fortier lack the independence and impartiality required by Article 14(1) of the ICSID Convention. It states that Judge Keith and Mr. Fortier harbor a general negative attitude toward the Respondent.

86. Venezuela's position is that Judge Keith and Mr. Fortier did not have authority to discharge their functions under Article 56(3) of the ICSID Convention and ICSID Arbitration Rule 8(2) because of the Respondent's then pending proposal to disqualify Mr. Fortier. For Venezuela, the

¶36; *Tidewater Investment SRL and Tidewater Caribe, C.A. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/10/5), Decision on Claimant's Proposal to Disqualify Professor Brigitte Stern, Arbitrator (December 23, 2010) ¶37; *Saint-Gobain Performance Plastics Europe v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/12/13), Decision on Claimants' Proposal to Disqualify Mr. Gabriel Bottini from the Tribunal under Article 57 of the ICSID Convention (February 27, 2013) ¶55.

[37] *Burlington supra* note 36 ¶66; *Abaclat supra* note 30 ¶75; *Blue Bank supra* note 36 ¶59; *Repsol supra* note 30 ¶71.

[38] *Burlington supra* note 36 ¶68, footnote 83; *Abaclat* supra note 30 ¶71, footnote 25; *Blue Bank supra* note 36 ¶61, footnote 43; *Repsol supra* note 30 ¶73, footnote 58.

[39] C. Schreuer, The ICSID Convention, Second Edition (2009), page 1202 ¶¶134-154.

[40] *Burlington supra* note 36 ¶66; *Abaclat supra* note 30 ¶76; *Blue Bank supra* note 36 ¶59; *Repsol supra* note 30 ¶71.

[41] *Burlington supra* note 36 ¶67, *Abaclat supra* note 30 ¶77; *Blue Bank supra* note 36 ¶60, *Repsol supra* note 30 ¶72.

fact that they discharged their functions under these provisions could only be explained by concluding they were biased.

87. This conclusion of bias ignores the record in this case. Judge Keith and Mr. Fortier sought comments from the parties on the resignation and received conflicting views on the correct procedure and the correct outcome. Judge Keith and Mr. Fortier considered these views when rendering their March 4, 2015 decision and reached an informed decision that they could discharge their function under the Convention and Rules.

88. Similarly, Venezuela argues that the decision to refuse consent to the resignation could only have been motivated by the desire to retaliate against the Respondent and its nominee. It states that the sole legal basis to refuse such consent is the existence of collusion between the resigning arbitrator and its appointing party. Since Judge Keith and Mr. Fortier did not find collusion between the Respondent and Prof. Abi-Saab, Venezuela asserts that their refusal could only be explained by concluding they were biased.

89. Again, this conclusion of bias ignores the reasons of Judge Keith and Mr. Fortier in the March 4, 2015 letter which expressly cite the changed circumstances prevailing by March 2015. In their reasons Judge Keith and Mr. Fortier noted that Prof Abi-Saab had indicated he would complete his dissent by the end of November and that he would resign by the end of 2014 in any event. However, the dissent was not issued until February 19, 2015 and the resignation was not tendered until February 20, 2015. Judge Keith and Mr. Fortier also noted that by February 20, 2015 the quantum hearing was only seven weeks away and the challenge to Mr. Fortier was still pending decision by Judge Keith and Prof. Abi-Saab.

90. It is evident that the Respondent and the challenged arbitrators differ on the appropriate procedure and the circumstances that would warrant a refusal to consent to Prof. Abi-Saab's resignation under Article 56(3) of the ICSID Convention and ICSID Arbitration Rule 8(2). However, this difference of views does not demonstrate apparent or actual bias on the part of Judge Keith or Mr. Fortier.

91. The Respondent also relies on statements in Prof. Abi Saab's two Dissenting Opinions. Prof. Abi Saab's Dissenting Opinions reveal profound disagreement among the Tribunal on points of law and assessment of evidence. Such disagreement is not proof that Judge Keith and Mr. Fortier harbored a general negative attitude toward Venezuela. At most, it reflects strongly held differences of opinion among highly experienced arbitrators.

92. The Respondent claims that Mr. Fortier should be disqualified on the additional basis of his alleged ongoing relationship with Norton Rose. It bases this allegation in particular on three facts: (a) that certain members of Norton Rose (including Mr. Valasek) acted as tribunal assistants for Mr. Fortier in other arbitrations; (b) that Mr. Valasek exceeded his proper role when he acted as assistant to the tribunal in the Yukos arbitrations presided over by Mr. Fortier; and (c) the physical proximity of Mr. Fortier's office with Norton Rose offices in Montreal.

93. The arguments with respect to (a) above have already been rejected as they were not filed promptly (see *supra* ¶ 66).

94. The Respondent's argument with respect to (b) above is unsubstantiated. There is no evidence that Mr. Valasek acted beyond his stated role. All that currently exists is an allegation by Russia in the Yukos set-aside proceedings to the effect that Mr. Valasek acted as a "fourth arbitrator". These allegations are insufficient to demonstrate the extent of Mr. Valasek's involvement in the Yukos arbitrations.

95. Even if proved, Mr. Valasek's involvement in the Yukos arbitrations is irrelevant to a determination of Mr. Fortier's independence or impartiality in this case. The Yukos arbitrations involved different parties, different facts, and different treaties than the present case. Accordingly, the facts concerning Mr. Valasek's involvement in the Yukos arbitrations are irrelevant to Mr. Fortier's independence and impartiality in this case.

96. Finally, with respect to (c) above, the proximity of office space is irrelevant to determining Mr. Fortier's independence and impartiality.

97. A third party undertaking a reasonable evaluation of the facts in this case would not conclude that Judge Keith and Mr. Fortier lack the qualities required by Article 14(1) of the ICSID Convention. Accordingly, the Proposal is rejected.

F. DECISION

98. Having considered all of the facts alleged and the arguments submitted by the parties, and for the reasons stated above, the Chairman:

(a) rejects the request for a recommendation on the Proposal from a third party;

(b) rejects the request for an oral hearing on the Proposal; and

(c) rejects the Bolivarian Republic of Venezuela's Proposal to Disqualify Judge Kenneth Keith and Mr. L. Yves Fortier.

[Signed]

_____

Chairman of the ICSID Administrative Council

Dr. Jim Yong Kim

Annex A – Mr. L. Yves Fortier's Explanations of February 13, 2015

Dear Chairman, dear Professor Abi-Saab,

I have little to add to my email of 3 February 2015 to Mr. Kahale which was copied to you and the Claimants by Mr. Flores.

As I informed you on 18 October 2011 (copy attached), in the context of an earlier challenge against me by the Respondent, I resigned as a partner of Norton Rose OR on 31 December 2011. Since that date, I have continued my practice as an arbitrator and mediator autonomous from Norton Rose OR in separate premises (Cabinet Yves Fortier) in Montreal on the 28th floor of Place Ville Marie which I lease from the owners of the building in the same wing as Navigant Consulting. Norton Rose has a mail room (not a reception area) in another wing. Needless to say, since 31 December 2011, I have had no access to Norton Rose OR's files and information systems.

The Yukos Tribunals referred to by the Respondent issued Interim Awards on Jurisdiction and Admissibility on 30 November 2009. These Interim Awards have been available on various websites, including that of the Energy Charter Secretariat, since February 2010. The cover page of each Award describes Mr. Martin Valasek as "Assistant to the Tribunal". The Interim Awards have thus been in the public domain for more than five (5) years.

On 18 October 2011, I informed you (and the parties to the present arbitration) that "after 1 January 2012", I would continue to call upon certain members of Norton Rose OR for assistance "in certain files in which I serve as an arbitrator". I then gave as an example of such assistance the role of Administrative Secretary. Another obvious example for any lawyer practicing in the field of international arbitration is, of course, the role of Assistant to the Tribunal which is precisely the role Mr. Valasek fulfilled for the Yukos Tribunals for nearly 10 years until the Final Awards were issued on 18 July 2014. I point out that, on the cover page of each final Award, Mr. Valasek is again described as "Assistant to the Tribunal".

Whatever may have been written in recent press reports does not change the fact that, after 1 January 2012 and until 18 July 2014, Mr. Valasek, in the Yukos case, continued to assist the Tribunals as he has done since 2005. This is precisely what I disclosed in my letter of 18 October 2011.

With respect to paragraph 9 of Respondent's letter of 10 February 2015, I confirm that Mr. Valasek has never participated in any way in the present arbitration.

For your additional information and to complete the list of cities where, since 1 January 2012, I have continued to practice:

> *On 1 June 2012, I was appointed as Chairman of the World Bank Sanctions' Board. In that capacity, I have an office in Washington D.C.*

> *On 8 August 2013, I was appointed as a member of the Security Intelligence Review Committee of Canada and sworn in as a member of the Privy Council of Canada. In that capacity, I have an office in Ottawa, Ontario.*

I trust that these facts will be of assistance to you in your consideration of the pending proposal for my disqualification.

I reiterate my profound conviction that I am, always have been and will remain, able to exercise independent judgment in the present arbitration.

Annex B – Mr. L. Yves Fortier's Explanations of April 16, 2015

Dear Sir,

In accordance with the schedule established by the ICSID Secretariat, I now provide my explanations to the Respondent's new proposal to disqualify Judge Keith and myself "for lack of the requisite impartiality" and the Respondent's invocation of additional grounds for my own disqualification.

Firstly, as I was invited to do by the Tribunal's Secretary in his letter of 26 March, I would like to incorporate to the present explanations the submission which I made on 13 February 2015 to the Chairman and arbitrator (as he then was) Abi-Saab.

Secondly, with respect to the Respondent's central submission of 2 April 2015 that Judge Keith and I should be disqualified because we have "exhibited an attitude towards Respondent that in the reasonable evaluation of a third party would give rise to the appearance of a lack of the requisite impartiality" (at p. 53), I note that it is based in part on our decision to withhold consent to Professor Abi-Saab's resignation as well as on the Respondent's analysis of the Majority Decision of 3 September 2013 seen mainly through the prism of Professor Abi-Saab's dissent of 19 February 2015.

As to our decision to withhold consent, I have nothing to add.

As to the Respondent's analysis of the Majority Decision of 3 September 2013, I note that it leads the Respondent to conclude "once again that Judge Keith and Mr. Fortier appeared determined to reach a result against Respondent regardless of what the record showed" (at p. 26). In that connection, I say the following since, if I may borrow the words of Professor Abi-Saab, "they touch on honour" and cannot be left unanswered:

1) The Decision of 3 September 2013 speaks for itself (as indeed does Professor Abi-Saab's "vigorous" dissent).

2) While I have never thought of myself as being infallible, I do affirm categorically, notwithstanding Professor Abi-Saab's statements to the contrary in the present case, that I have never, in this case or in any other case in which I have served as an arbitrator, if I may borrow

again the very words of Professor Abi-Saab, constructed a scheme "[in order] to attain the result [I] seek to reach" (at p. 28).

3) It bears pointing out that the Chairman of the ICSID Administrative Council in his Decision of 5 May 2014 found that "[…] there is nothing in the reasoning or conclusions of the Decision on Reconsideration that suggests an absence of impartiality" (at para. 55). With respect, I suggest that the same conclusion must be reached with respect to the Decision of the Majority of 3 September 2013.

Thirdly, yet again, the Respondent proposes my disqualification because, in its estimation, I have ongoing "significant, substantive, professional relationships with senior Norton Rose attorneys" (at p. 2 and 52). Yet again, I wish to reassure the Respondent that I do not have today, and have not had since 1 January 2012, any ongoing professional ties to Norton Rose. In order to allow you to take an informed decision, I will summarize what I consider to be the key facts in respect of the grounds invoked by the Respondent:

1) I did not resign as a partner of Norton Rose at the end of 2011 because of the Respondent's proposal for my disqualification but rather because I wanted to continue my practice as an independent arbitrator without having to contend with repeated conflicts of interest inevitable as a partner in a 4000+ person worldwide law firm.

2) I affirm on my conscience and honour that I severed all of my professional links with Norton Rose as of 31 December 2011. This is a matter of public record as will be seen, inter alia, by a reference to the website of Cabinet Yves Fortier at www.yfortier.ca.

3) Although I do not intend to litigate here the challenge by the Russian Federation before the Dutch Courts of the Awards issued last July by the Yukos tribunals, it is also a matter of public record that Mr. Martin Valasek was appointed as Assistant to the Yukos tribunals (not to its Chairman) in 2005 (when he was an associate at Ogilvy Renault) with the consent of my co-arbitrators and the parties and that he served those tribunals in that capacity until the final awards were issued on 18 July 2014.

4) After I resigned from Norton Rose, it made eminent practical (and financial) sense that Mr. Valasek who had then served the Yukos tribunals as Assistant for more than 6 years continue to serve in that capacity until the end of the proceedings.

5) As is well-known, the Yukos arbitrations, by any standard, were mammoth arbitral proceedings. I quote from paragraph 4 of the Final Award:

"*[…] At the highest, Claimants are claiming damages from Respondent of "no less than US$ 114.174 billion." Since February 2005, the Tribunal has held five procedural hearings with the Parties and issued 18 procedural orders. In the fall of 2008, the Tribunal held a ten-day hearing on jurisdiction and admissibility in The Hague and, in November 2009, issued three Interim Awards, each over 200 pages. A twenty-one day Hearing on the Merits (or "Hearing") took place in The Hague from 10 October to 9 November 2012. The written submissions of the Parties span more than 4,000 pages and the transcripts of the hearings more than 2,700 pages. Over 8,800 exhibits have been filed with the Tribunal. "*

6) As Assistant to the Tribunals during nearly 10 years, Mr. Valasek undertook numerous tasks assigned to him by the Tribunals, including summarizing evidence, researching specific issues of law and organizing the massive case file. Notwithstanding any press reports to the contrary and the speculation of the Respondent, Mr. Valasek was not involved and did not play any role in the Tribunal's decision-making process. Since I January 2012, Mr. Valasek has billed the PCA directly for the work which he has done as Assistant to the Yukos tribunals.

7) I categorically deny the Respondent's assertion that I continue to maintain professional ties today with Norton Rose and that I use Norton Rose senior attorneys "as a matter of routine in my arbitrations" (at p. 11).

8) The only other Norton Rose lawyer who has continued to serve, after 31 December 2011, as Assistant to an ICSID arbitral tribunal which I chair and who continues to do so today is Ms. Alison Fitzgerald who works in the Ottawa office of Norton Rose. These are the two Zimbabwe's cases referred to in footnote 27 of the Respondent's submission. These two related large cases have been proceeding in parallel since the tribunals were constituted. Ms. Fitzgerald was appointed as Assistant to the Tribunals prior to 31 December 2011 when she was a very junior

lawyer with Ogilvy Renault. After I resigned from Norton Rose, it also made good practical and financial sense to have her continue as Assistant to these ICSID tribunals. Since 1 January 2012, Ms. Fitzgerald has billed ICSID directly for her work as Assistant to these Tribunals.

9) In July 2012, I hired Ms. Annie Lespérance as an associate to assist me in all my arbitration files. Ms. Lespérance has since been appointed as Assistant to many tribunals including the two ICSID Tribunals mentioned in footnote 40 of the Respondent's submission. Ms. Lespérance has never had any ties to the Norton Rose firm.

10) The Respondent argues that "my physical proximity to Norton Rose […] reinforces the appearance of a lack of the requisite impartiality in this case" (p. 17). With respect, I don't think this can be a serious argument.

As I explained in my letter of 13 February 2015, I occupy and rent premises in Montreal (Cabinet Yves Fortier) since 1 January 2012 in the North wing of the 28th floor of the largest office building in Montreal. The building has 41 floors and each floor has four separate, distinct wings. Navigant Consulting has an office next to my Cabinet in the North wing. I learned recently that Tory's LLP, one of Canada's largest law firm, has now leased the West wing of the 28th floor. I recall that Norton Rose's mail room and personnel cafeteria are situated in the South and East wings of the 28th floor.

I trust that these facts will be of assistance to you in your consideration of the pending proposal for my disqualification. Notwithstanding the Respondent's repeated proposals to seek my disqualification, I reiterate my profound conviction that I am, always have been and will remain able to exercise independent judgment in the present arbitration.

In closing, I note that the Respondent invites me to voluntarily withdraw as arbitrator in this case (p. 52). In view of the facts which are before you, I see no reason to voluntarily withdraw as arbitrator.

June 1, 2015:

Dear Sir,

With your leave, I write further to the ICSID Secretariat's letter of 1 June 2015 to the parties (attached as Annex 1).

With respect to paragraph 15 of Respondent's letter of 23 April 2015 to the Secretary General of ICSID and the Respondent's email of 27 May 2013 to Ms. Kinnear (attached as Annex 2), I offer the following explanations.

Firstly, I reiterate and reconfirm all of the explanations which I set out very clearly in my email of 16 April 2015 to you, in particular numbered paragraphs 2), 7) and 8).

Secondly, in so far as Annex 7 of Respondent's letter of 23 April is concerned and subject to the following paragraph, all of the international arbitrations (ICSID or non-ICSID) in which Rachel Bendayan has assisted me pre date my departure from Norton Rose. Subject to my explanations of 16 April, no other Norton Rose lawyer has worked with me on any other arbitration (ICSID or non-ICSID) after I resigned as a partner of that Firm on 31 December 2011.

Ms. Bendayan was appointed in 2011 as Assistant to the Tribunal which I chaired in ICSID Case No. ARB/11/8, Agility for Public Warehousing Company K.S.C. v. Islamic Republic of Pakistan. As there was a hearing on Jurisdiction scheduled for June 2012, and as Ms. Bendayan had assisted the Tribunal in respect of that phase of the arbitration, it also made good practical and financial sense to have Ms. Bendayan continue as Assistant to this ICSID Tribunal until the completion of the Jurisdictional phase of the Arbitration. After the decision on Jurisdiction was rendered in February 2013, Mrs. Bendayan resigned as Assistant to this Tribunal and was replaced by my colleague, Ms. Annie Lespérance.

I hope these additional explanations will be of assistance to you.

June 18, 2015:

As to the Respondent's first question, I have verified the ICSID case file and confirm the following.

As to the date when the parties were notified that Ms. Rachel Bendayan would be serving as assistant to the tribunal in ICSID Case No. ARB/11/8 (Agility for Public Warehousing Company K.S.C. v. Islamic Republic of Pakistan), the date is October 18, 2011.

As to the date when the parties were notified that Ms. Annie Lespérance would replace Ms. Bendayan as assistant to the tribunal in ICSID Case No. ARB/11/8, the date is October 10, 2014.

Mr. Fortier also confirmed

[T]hat all the other arbitrations, whether administered by ICSID or not, in which Ms. Bendayan acted as assistant to a tribunal presided by Mr. Fortier or assisted Mr. Fortier in other capacities pre-date his departure from Norton Rose. As explained, Ms. Bendayan continued to serve as assistant to the tribunal in ICSID Case No. ARB/11/8 following Mr. Fortier's departure from Norton Rose on December 31, 2011, until her replacement in October 2014.

June 18, 2015 [email from the Secretary of the Tribunal to the parties conveying a message from Mr. Fortier]

Dear Mesdames and Sirs,

In connection with Mr. Kahale's inquiry of June 18, 2015 (item #3), Mr. Fortier has asked me to confirm that, aside from ICSID Case No. ARB/11/8, Ms. Rachel Bendayan did not continue assisting Mr. Fortier in any arbitration, ICSID or non-ICSID, following his resignation from Norton Rose on December 31, 2011.