

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Perenco Ecuador Limited

v.

Republic of Ecuador

(ICSID Case No. ARB/08/06)

Annulment Proceeding

PROCEDURAL ORDER NO. 3

Members of the ad hoc Committee

Professor Eduardo Zuleta, President of the *ad hoc* Committee

Professor Rolf Knieper, Member of the *ad hoc* Committee

Professor Mónica Pinto, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Ms. Anneliese Fleckenstein

December 21, 2020

Procedural Order No. 3
Remote Hearing Protocol

I. PROCEDURAL BACKGROUND

1. On October 16, 2020, the *ad hoc* Committee advised the Parties that due to the COVID-19 pandemic, it considered that it would not be feasible to conduct the Hearing on January 12-13, 2021 (the “**Hearing**”) in-person, as planned. In order to preserve the Hearing dates, the Committee invited the Parties to confer and inform it whether they would be amenable to conducting the Hearing virtually.
2. On October 28, 2020, the Parties informed the Committee that they agreed to holding a 2-day hearing remotely on the Zoom platform on January 12-13, 2021, and they additionally proposed a hearing schedule for the Committee’s consideration.
3. On October 29, 2020, the *ad hoc* Committee confirmed that it agreed with the schedule proposed by the Parties.
4. Pursuant to Section 16.1 of Procedural Order No. 1, a pre-hearing organizational meeting between the Parties and the Committee was held by video conference on December 21, 2020 (the “**Pre-Hearing Conference**”), to discuss any outstanding procedural, administrative, and logistical matters in preparation for the Hearing. Participating were:

Members of the *ad hoc* Committee:

Professor Eduardo Zuleta, President of the Committee
Professor Rolf Knieper, Member of the Committee
Professor Mónica Pinto, Member of the Committee

ICSID Secretariat:

Ms. Anneliese Fleckenstein, Secretary of the Committee

On behalf of Perenco Ecuador Limited:

Jonathan Parr, Perenco
Josselyn Briceño de Luise, Perenco
Mark W, Friedman, Debevoise & Plimpton
Laura Sinisterra, Debevoise & Plimpton
Sarah Lee, Debevoise & Plimpton
Janine Godbehere, Debevoise & Plimpton

On behalf of the Republic of Ecuador:

Claudia Salgado Levy, Procuraduría General del Estado del Ecuador
Nazaret Ramos, Procuraduría General del Estado del Ecuador
Diana Moya, Procuraduría General del Estado del Ecuador
Eduardo Silva Romero, Dechert LLP
Gabriela Gonzalez-Giraldez, Dechert LLP
Anne Driscoll, Dechert LLP

5. During the Pre-Hearing Conference, the Parties and the Committee discussed the draft hearing protocol circulated to the Parties on December 3, 2020, and the Parties' joint statement of December 16, 2010, advising the Committee of the agreements reached on all the items. The Committee indicated that it accepted the agreement of the Parties.
6. An audio recording of the Pre-Hearing Conference was made and deposited in the archives of ICSID, and it was made available to the Members of the Committee and the Parties on December 21, 2020.
7. The *ad hoc* Committee has considered the Parties' agreement and, in the present Protocol, sets out the procedural rules that the Parties have agreed upon and the Committee has determined will govern the conduct of the Hearing.

II. ORGANIZATION OF THE HEARING

A. DATE AND FORMAT OF THE HEARING

8. The Hearing will take place virtually through Zoom on January 12-13, 2021 to be hosted by Sparq. The details to join the Zoom session will be shared by the ICSID Secretariat in advance of the Hearing.

B. ORDER OF PROCEEDINGS AND SCHEDULE

9. In order to accommodate the multiple time zones of all Hearing Participants, the following schedule will apply:

- January 12, 2021: the Hearing will start at 8 a.m. EST/ 10 a.m. AST/ 2 p.m. CEST, and is expected to finish at 3 p.m. EST/ 5 p.m. AST/ 9 p.m. CEST. There will be two breaks of 15 minutes each, as well as a meal break of 60 minutes.
 - January 13, 2021: the Hearing will start at 8 a.m. EST/ 10 a.m. AST/ 2 p.m. CEST, and is expected to finish at 1 p.m. EST/ 3 p.m. AST/ 7 p.m. CEST. There will be one break of 60 minutes.
10. The order of proceedings and structure of the Hearing will be as indicated in the agenda incorporated as **Annex A**.
 11. The Committee reserves discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.

C. TIME ALLOCATION

12. The Parties have agreed that they will each use 2:30 hours for their opening statements and 1:30 hours for their rebuttal statements. Time not used during the opening presentations may not be added to the rebuttal presentations and time run over during the opening presentations will be deducted from the rebuttal presentations.
13. *Ad hoc* Committee Questions. Time taken by the Committee for its own questions during the Parties' presentations and the answers to those questions shall not be counted against the Parties' time. Time used for housekeeping or to resolve technical difficulties shall also not be counted against the Parties' time.
14. The Secretary of the Committee shall keep account of time and advise the Parties of the time remaining upon request. The Secretary will circulate a record of the total daily time used at the end of each Hearing day.
15. The *ad hoc* Committee emphasizes that the Parties are expected to use the Hearing day efficiently and avoid unnecessary slippage (*e.g.*, delays in returning from breaks). In the event of excess slippage, the Committee may revisit the length of the sitting day or, in

unusual circumstances, the time allocated to the Parties, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard.

D. DOCUMENTS FOR USE AT THE HEARING

1. Electronic Hearing Bundle

16. There shall be a single Electronic Hearing Bundle (PC and Mac compatible), to be prepared jointly by the Parties.
17. The Parties shall provide, no later than January 8, 2021, the Electronic Hearing Bundle which shall contain all pleadings, exhibits, legal authorities and Committee’s orders or decisions on file to date, with a consolidated hyperlinked index. It shall not contain any document not previously filed. It shall be organized as follows:

Electronic Hearing Bundle:

01. Consolidated and Hyperlinked Index

- A. Consolidated and hyperlinked index of all documents [Excel format]

02. Pleadings

- A. Republic of Ecuador
- B. Perenco Ecuador Limited

03. Exhibits

- A. Republic of Ecuador
- B. Perenco Ecuador Limited

04. Legal Authorities

- A. Republic of Ecuador
- B. Perenco Ecuador Limited

05. Committee’s Rulings

- A. Procedural Orders
- B. Decision on Stay of Enforcement

06. Tribunal Award

18. The Electronic Hearing Bundle shall be uploaded by the Parties to a designated sub-folder in the BOX filesharing platform. To ensure operation of the hyperlinked index, the entire

Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the Parties shall upload the organized Electronic Hearing Bundle to a designated sub-folder on to the BOX filesharing platform, in a sub-folder using the structure indicated at paragraph 17 *supra*, and including a consolidated (non-hyperlinked) index.

19. Prior to the Hearing, the Members of the *ad hoc* Committee, the Secretary of the Committee and the Parties shall download the Electronic Hearing Bundle from the BOX Case Folder into their own devices to have access to it offline during the remote Hearing. The court reporters will also be provided a copy of the Electronic Hearing Bundle via the ICSID Secretariat.
20. The Parties shall also distribute the Electronic Hearing Bundle in a USB to be sent by courier no later than January 8, 2021, directly to Professor Rolf Knieper. The USB shall contain the hyperlinked version of the index. The USB should be sent to the following address:

Professor Rolf Knieper
Reichsforststrasse 20
60528 Frankfurt/Main
Germany
phone: +49 69 66162976

2. Presentations and Demonstrative Exhibits

21. The Parties may use PowerPoint or other slide presentations for their oral statements, subject to the below rule on demonstrative exhibits.
22. Demonstrative exhibits shall be used in accordance with Sections 15.8 of PO1 (reproduced below), with certain adjustments indicated in paragraph 23 *infra*:

15.8. Demonstrative exhibits (such as charts, tabulations, chronologies, or any other exhibits involving the manipulation of information from the evidentiary record, including if used in PowerPoint slides) may be used at any hearing, provided they contain no new evidence. For the avoidance of doubt, this obligation does not apply to purely

argumentative PowerPoint slides, or slides containing only unmodified, enlarged, or highlighted copies of exhibits/legal authorities or excerpts of exhibits/legal authorities. Each party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Committee Members, the Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

23. To account for the virtual nature of the Hearing, PO1 Section 15.8 is amended such that: (i) the hard copy submission of demonstratives is not required; and (ii) an electronic copy of each demonstrative shall be distributed in both PDF and PowerPoint format by the Party intending to use it *via* an electronic mail sent to the entire case email distribution for each Party, the Secretary of the Committee, the Members of the Committee, and to the court reporters as necessary no later than 1 (one) hour *prior* to its use, in order to facilitate offline access to the demonstrative by the Hearing participants. This will enable participants to print the demonstrative if desired. It is advisable to transmit the demonstrative exhibits to the Members of the Committee and the ICSID Secretary with more than 1-hour notice.
24. In addition, promptly after the conclusion of the Hearing day in which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating each with the corresponding CD or RD number.

3. Electronic Presentation of Evidence

25. Each Party shall present its demonstrative exhibits to the participants in the Hearing *via* the video platform system.
26. Hearing participants are advised to have the Electronic Hearing Bundle and any demonstrative exhibit previously distributed in accordance with paragraph 23 *supra* downloaded into their own devices and available for access offline.

27. Demonstrative exhibits and clean, unannotated electronic copies of documents on the record may be displayed to all Hearing participants via the Zoom videoconference platform. Any Hearing participant shall have the technical ability to display a document to all Hearing participants via Zoom, and such person need not be an active speaker. The Hearing participant displaying the document will be the only one with the ability to scroll through the document being displayed. The Parties are advised to limit their use of this function, to minimize pressure on the internet bandwidth and on the stability of the connection.
28. Documents that do not form part of the record may not be presented at the Hearing.

E. AUDIO RECORDING

29. The provision of Section 18.1 of PO1 concerning audio recording (reproduced below) apply.

18.1. Sound recordings shall be made of all hearings and sessions.
The sound recordings shall be provided to the parties and the Committee Members.

30. The Secretariat shall record the Hearing, and the audio recording will be shared with the Parties and the *ad hoc* Committee at the conclusion of the Hearing.
31. Except for the court reporters that will do an audio recording of the Hearing, the Committee and the Parties agree that the attendees will not otherwise record, *via* audio, video or screenshot the Hearing or any part of it.

F. TRANSCRIPTION

32. The provisions of PO1, Sections 18.2 and 18.3 concerning transcription (reproduced below) apply, with the adjustments indicated in paragraphs 33 and 36 *infra*.

18.2. Verbatim transcripts in the procedural languages shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Committee, the verbatim transcripts shall be available in real-time using LiveNote or similar software

and electronic transcripts shall be provided to the parties and the Committee on a same-day basis.

18.3. The parties shall agree on any corrections to the transcripts within ten business days of the latest date of receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Committee shall decide upon any disagreement between the parties, and any correction adopted by the Committee shall be entered by the court reporter in the revised transcripts.

33. Real-time court reporting in English shall be made available to the Hearing participants *via* an online link connection to be provided by the court reporters. Hearing participants shall connect to the transcript by opening a link in a browser window separate from the Zoom browser window. The details (link, password) and instructions to connect to the streamed transcript shall be provided by the Secretariat to the Hearing participants before the start of the Hearing day.
34. Transcription services will be provided by Mr. David Kasdan (the “**court reporters**”). The court reporters may seek to clarify the record from time to time during the course of the hearing.
35. Participants may access the remote Real-time transcript on a laptop or iPad separate from the device used for Zoom. The Committee directs the testing of the Real-time transcription platform. That platform shall be used during trials of the Zoom platform as far as possible.
36. The deadline for corrections to the transcript shall be 20 business days following the later of the dates of the receipt of the sound recordings and/or transcripts.

G. VIRTUAL HEARING ARRANGEMENTS

37. The following procedures shall be followed in order to ensure the good conduct of the virtual hearing:

1. Testing

38. The Secretariat will conduct technical tests with the Committee and each Party in advance of the Hearing, to test connectivity to the Zoom video conference platform and to the transcription service. The Committee notes that the Secretariat recommends a minimum of one test for each site that will connect to the Hearing, and for as many Hearing participants as possible to connect for each test. On December 21, 2020, prior to the start of the Pre-Hearing Conference, a successful test of the system was conducted with all participants connected for the Pre-hearing Conference, including the Committee Members and the court reporter. Counsel for the Claimant requested an additional test of the system which will take place on January 8, 2021.
39. Each participant should join the tests with the same device(s) and internet connection and from the same physical location that they intend to use for the Hearing.

2. Participants

40. Each Party shall provide its respective List of Hearing Participants (“**List of Participants**”) by January 8, 2021, using the format provided in **Annex B**. Each Party shall designate those participants that will have an active speaking role (“**Active Participants**”), and those who will be passive attendees (“**Passive Participants**”).
41. For ease of identification, Participants shall join the videoconference using the naming convention indicated in the format in **Annex B**, namely, first and last name preceded by [C] (for Participants for Perenco Ecuador Limited), [R] (for Participants for the Republic of Ecuador). Should there be Participants joining from a common conference room, the conference room connection may be identified as “[C] [R] Conference Room #” as appropriate.
42. Participants will join the videoconference through a “waiting room” to be managed by Sparq.
43. Access to the videoconference shall be restricted to those included in the List of Participants. Should any non-listed Participant attempt to connect to the videoconference,

Sparq will alert the Secretary of the Committee, and the Committee will promptly address the matter with the Parties. All Participants in the Hearing bear an ongoing duty to warn of the presence of any other person on the videoconference.

44. Participants shall join the videoconference 30 minutes in advance of the start on each day to facilitate the identification and to address any technical contingencies.
45. Each Party shall designate, by January 8, 2021, one of its representatives to act as videoconferencing emergency contact person (“**Technical Emergency Contact**”) for the purposes of addressing any technical incidents which arise during the videoconference. The Technical Emergency Contact shall be responsible for advising the Committee and ICSID if an essential participant on their side is disconnected or otherwise cannot participate. Otherwise, the Technical Emergency Contact shall notify and address technical issues with ICSID technical contact details, with a copy to the Secretary.
46. Sparq shall enable the multi-pin function of the Zoom platform for all hearing participants, such that each hearing participant may select which other hearing participants to be visible on their screens.

3. Connectivity

47. The Parties shall ensure that each of their representatives will connect to the videoconference through a stable internet connection offering sufficient bandwidth, and using a camera and microphone/headset of adequate quality.
48. If available, Participants are advised to use a wired Ethernet connection instead of Wi-Fi. Participants are also encouraged to keep a smartphone or tablet, having a 4G data connection and mobile hotspot functionality, available as a backup internet connection at all times during the Hearing.
49. The videoconference platform will also offer a dial-in telephone audio connection as a backup option should a Participant experience a temporary technical difficulty with a computer online connection.

4. Equipment and Set Up

50. For optimum sound quality, especially for the audio recording and the transcription, ICSID highly recommends that the main speakers use an external microphone connection such as a headset through the USB or “mic” jack of the computer or laptop that they use for the Zoom videoconference. If not available, Active Participants are asked to speak close to the microphone.
51. While not indispensable, Hearing participants are advised to have at least two screens, and preferably three (it can be one device with multiple screens or a combination of devices including tablets) to facilitate simultaneous viewing of: (i) the Zoom video connection; (ii) the online Real-time transcript; and (iii) offline documents.

5. Videoconference Etiquette

52. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, lead counsel and Party representatives should remain connected throughout the Hearing day.
53. The Parties are advised to keep the number of video connections to a minimum, and to Active Participants only. Passive Participants should join the meeting through their computer but connecting only their audio (*i.e.* turning their video off).
54. Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. Sparq shall have the ability to mute Participants if needed to avoid background noise, under the Committee’s control.
55. To facilitate an accurate transcription, speakers are advised to speak at a reasonable speed and with pauses between phrases.
56. Participants are advised to join the Hearing from a location without background noise and with adequate lighting. Participants joining via video shall avoid sitting with a window or source of light behind them.

6. Break-Out Rooms

57. Break-out rooms separate from virtual Hearing Room, to be used securely by each Party and the Committee during breaks, will be arranged by Sparq on the Zoom platform.
58. During the designated Hearing breaks, the Parties will be assigned to breakout rooms within the videoconference platform to enable to promptly reconvene all Participants following breaks.
59. The List of Participants (**Annex B**) shall indicate the break-out room to which Participants shall be assigned, with [C] for Perenco’s break out room, [R] for Ecuador’s break out room.
60. Each Party will make its own separate arrangements for private communication within its team during the Hearing by instant messenger or other appropriate means. The Zoom built-in chat function will be disabled, except for communications with the technical service provider acting as Zoom Operator.

H. GENERAL PROVISIONS

1. Reservation of immunities

61. Nothing in this Order shall constitute or be considered to be a limitation upon or a waiver of the privileges and immunities provided in Section 6 of the ICSID Convention, which privileges and immunities are specifically reserved.

2. Confidentiality

62. This ICSID proceeding, including all communications, is confidential. Participants in the remote Hearing must continue to comply with any applicable legal and ethical obligations with respect to confidentiality. All participants providing services shall (i) keep confidential all documents and information coming to their knowledge as a result of their participation in the Hearing; (ii) not use, or authorize any other person to use, such documents and information other than for the purpose of performing their work at the Hearing; and (iii) dispose all documents if printed, as confidential material, and delete all

electronic copies that might be stored on personal devices when their Hearing-related work has been completed.

3. Data Privacy

63. The List of Participants for the Hearing will contain personal data provided to ICSID in the context of the remote Hearing, including names and contact information, such as business email addresses and telephone numbers. This data is processed for the purpose of the legitimate interests of the Parties in resolving efficiently their dispute and, in particular, to ensure that procedural documents and Hearing arrangements are properly communicated to the Parties, their legal representatives, the Members of the Committee and other participants providing services for the Hearing.

For and on behalf of the *ad hoc* Committee,

[SIGNATURE]

Prof. Eduardo Zuleta Jaramillo
President of the *ad hoc* Committee
Date: December 21, 2020

ANNEX A
Hearing Agenda

Start	End	Duration	Description
January 12, 2021			
8:00 AM EST <i>10:00 AM AST</i> <i>2:00 PM CEST</i>	8:30 AM EST <i>10:30 AM AST</i> <i>2:30 PM CEST</i>	30 min	Housekeeping matters
8:30 AM EST <i>10:30 AM AST</i> <i>2:30 PM CEST</i>	9:45 AM EST <i>11:45 AM AST</i> <i>3:45 PM CEST</i>	1 h 15 min	Ecuador's Opening Statement
9:45 AM EST <i>11:45 AM AST</i> <i>3:45 PM CEST</i>	10:00 AM EST <i>12:00 PM AST</i> <i>4:00 PM CEST</i>	15 min	Break
10:00 AM EST <i>12:00 PM AST</i> <i>4:00 PM CEST</i>	11:15 AM EST <i>1:15 PM AST</i> <i>5:15 PM CEST</i>	1 h 15 min	Ecuador's Opening Statement
11:15 AM EST <i>1:15 PM AST</i> <i>5:15 PM CEST</i>	12:15 PM EST <i>2:15 PM AST</i> <i>6:15 PM CEST</i>	1 h	Break
12:15 PM EST <i>2:15 PM AST</i> <i>6:15 PM CEST</i>	1:30 PM EST <i>3:30 PM AST</i> <i>7:30 PM CEST</i>	1 h 15 min	Perenco's Opening Statement
1:30 PM EST <i>3:30 PM AST</i> <i>7:30 PM CEST</i>	1:45 PM EST <i>3:45 PM AST</i> <i>7:45 PM CEST</i>	15 min	Break
1:45 PM EST <i>3:45 PM AST</i> <i>7:45 PM CEST</i>	3:00 PM EST <i>5:00 PM AST</i> <i>9:00 PM CEST</i>	1 h 15 min	Perenco's Opening Statement
January 13, 2021			
8:00 AM EST <i>10:00 AM AST</i> <i>2:00 PM CEST</i>	9:30 AM EST <i>11:30 AM AST</i> <i>3:30 PM CEST</i>	1 h 30 min	Ecuador's Rebuttal
9:30 AM EST <i>11:30 AM AST</i> <i>3:30 PM CEST</i>	10:30 AM EST <i>12:30 PM AST</i> <i>4:30 PM CEST</i>	1 h	Break
10:30 AM EST <i>12:30 PM AST</i> <i>4:30 PM CEST</i>	12:00 PM EST <i>2:00 PM AST</i> <i>6:00 PM CEST</i>	1 h 30 min	Perenco's Rebuttal
12:00 PM EST <i>2:00 PM AST</i> <i>6:00 PM CEST</i>	1:00 PM EST <i>3:00 PM AST</i> <i>7:00 PM CEST</i>	1 h	Committee's Questions

ANNEX B
List of Participants

PERENCO ECUADOR LIMITED

v.

REPUBLIC OF ECUADOR

(ICSID CASE NO. ARB/08/6) - ANNULMENT

HEARING ON ANNULMENT

January 12-13, 2021

LIST OF PARTICIPANTS

<i>AD HOC COMMITTEE</i>		
[Name]	President	
[Name]	Member of the Committee	
[Name]	Member of the Committee	

ICSID SECRETARIAT		
[Name]	Secretary of the Committee	[Email address / Phone number]

PERENCO ECUADOR LIMITED			
Connecting by Video Break Out Room C			
<i>Party Representative</i>			
[Name]	[Company]	[Email address / Phone number]	[AP (Active Participant), PP (Passive Participant)]
<i>Counsel</i>			
[Name]	[Firm]	[Email address / Phone number]	[AP (Active Participant), PP (Passive Participant)]

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REPUBLIC OF ECUADOR			
Connecting by Video Break Out Room R			
<i>Party Representative</i>			
[Name]	[Affiliation]	[Email address / Phone number]	[AP (Active Participant), PP (Passive Participant)]
<i>Counsel</i>			
[Name]	[Firm]	[Email address / Phone number]	[AP (Active Participant), PP (Passive Participant)]

COURT REPORTERS		
[Name]	[Company]	[Email address]

<u>TECHNICIAN</u>	
[Name]	[ICSID Technical Emergency Contact]
[Name]	[Perenco Technical Emergency Contact]
[Name]	[Ecuador Technical Emergency Contact]