INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

In the Matter of Arbitration:
Between:
GABRIEL RESOURCES LTD. and GABRIEL RESOURCES (JERSEY) LTD.,
Claimants,
and
ROMANIA,
Respondent.

HEARING ON THE MERITS

Saturday, December 7, 2019

The World Bank Group
1225 Connecticut Avenue, N.W.
C Building
Conference Room C3-150
Washington, D.C.

The hearing in the above-entitled matter came on at 9:30 a.m. before:

PROF. PIERRE TERCIER, President of the Tribunal
DR. HORACIO A. GRIGERA NAÓN, Co-Arbitrator
PROF. ZACHARY DOUGLAS, Co-Arbitrator
ALSO PRESENT:

MS. SARA MARZAL YETANO  
Secretary to the Tribunal

MS. MARIA ATHANASIOU  
Tribunal Assistant

Court Reporters:

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Interpreters:

MS. MARLIENA FILIP

MS. ALEXANDRA IULIANA MLADEN

MS. ALEXANDRA DOBRIN
ALSO PRESENT:

Attending on behalf of the Claimants:

MS. ABBY COHEN SMUTNY
MR. DARRYL LEW
MR. BRODY GREENWALD
MR. PETR POLÁŠEK
MR. HANSEL PHAM
MR. FRANCIS VASQUEZ JR.
MR. ANDREI POPOVICI
MS. GABRIELA LOPEZ
MR. FRANCIS LEVESQUE
MR. WILLIAM STROUPE
MS. NATALIA TCHOUKLEVA
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MS. IDA-LEVANA ZIGMUND
MS. ANCA DIANA PUSCASU
MS. OANA-MIRUNA URECHE
MS. RUXANDRA NITĂ
MS. ANGELICA-IULIANA HOGAȘ-PINTILIE
MR. CORNEL POPA (via video for Prof. Birsan)
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APPEARANCES:

Represent Gabriel Resources Ltd.:

MR. SIMON LUSTY
MR. RICHARD BROWN
MR. DANIEL KOCHAV
MS. RUTH TEITELBAUM

Representing Roşia Montană Gold Corporation:

MR. MIHAI BOTEA
APPEARANCES: (Continued)

Attending on behalf of the Respondent:

DR. VEIJO HEISKANEN
MR. MATTHIAS SCHERER
MS. NORADÈLE RADJAI
MS. LORRAINE de GERMINY
MR. CHRISTOPHE GUIBERT de BRUET
MR. DAVID BONIFACIO
MR. BAPTISTE RIGAudeau
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P R O C E E D I N G S

PRESIDENT TERCIER: Good morning, ladies and gentlemen. I see that everybody seems to be here. I welcome you on the sixth day of the first session of the Hearings in the ICSID Arbitration Case 15/31 between Gabriel Resources Limited and Gabriel Resources (Jersey) Limited versus Romania. I thank you very much for having accepted to sit also on Saturday morning.

I will start; we have not many points. The first again thanks to our Court Reporters for the Transcript. Thanks to our Secretary of the Report on the time.

The program for this morning is clear. We will have the testimony of Mr. Boc.

And last point, the proposal of the Arbitral Tribunal for Monday would be to start with Mr. Ariton, then Mr. Mocanu, then Ms. Serban, and Mr. Jurca, if possible, probably Professor Mihai probably will be on Tuesday.

Do you have a comment to that on your side?

No comment?
DR. HEISKANEN: We would need to look at the availabilities and revert during the break.

PRESIDENT TERCIER: Okay.

DR. HEISKANEN: Or after the break, rather.

PRESIDENT TERCIER: Thank you very much.

Fine.

If you have no further point, I think we could start with the examination of Mr. Boc.

EMIL BOC, RESPONDENT'S WITNESS, CALLED

PRESIDENT TERCIER: Good morning, Mr. Boc. I welcome you in this room, this proceeding. I'm glad for you being here.

I would like to start with the question of the language. In your Witness Statement, at the very last sentence, you write: "While this statement has been prepared in English, if called upon to respond to questions based on it orally, I will do so in Romanian."

Is it still the case?

THE WITNESS: I can have in English, but in case I need some time, so sometimes translation I will ask, but mainly I can do it in English.
PRESIDENT TERCIER: Thank you very much.

In any case, if you have the slightest doubt or problem, we will go to the Interpreters who are at our disposal.

THE WITNESS: Thank you, Mr. President.

PRESIDENT TERCIER: Fine.

THE WITNESS: And, of course, I would just like to thank you to you, members of the jury and all of you, for accepting me to be here on Saturday. I appreciate the effort, and I appreciate so much your decision to be here today. Thank you.

PRESIDENT TERCIER: Thank you very much.

You will be heard in this procedure, as you know, as a witness. I would like to introduce the members of the Arbitral Tribunal. On my left-hand side, Professor Horacio Grigera Naón; on my right-hand side, Professor Zachary Douglas. I'm the Chairman of the Tribunal, and my name is Pierre Tercier. You have Ms. Marzal Yetano, Secretary to the Tribunal; and the Assistant to the Tribunal, Maria Athanasiou.

I suppose you know who could be on each side
of the room, and I won't introduce them over there.

As a witness, may I invite you to read the Declaration that you have in front of you.

THE WITNESS: Out loud?

PRESIDENT TERCIER: Yes.

THE WITNESS: Do I have to--

PRESIDENT TERCIER: Yes.

THE WITNESS: Yes.

I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.

PRESIDENT TERCIER: Thank you.

THE WITNESS: Thank you.

PRESIDENT TERCIER: You have prepared for this procedure a witness statement dated 6th of May 2019. You have this document on your table?

THE WITNESS: It's supposed to be around. Yes, it is right here. I can see now.

PRESIDENT TERCIER: My question to you is: Can you confirm the content of this statement? If you have amendments or other points you would like to raise, you can do it.
THE WITNESS: Yes. This is the statement.

Yes, Mr. President, yes.

PRESIDENT TERCIER: And you confirm it?

THE WITNESS: Yes.

PRESIDENT TERCIER: You know the procedure, after one question or two questions from the Tribunal, you will be examined by Respondent in direct and then cross-examined by counsel for Claimant and then redirect with Claimant for Respondent. This is a procedure. And you know also that the Arbitral Tribunal has the right to intervene whenever it finds it needs to.

I want to make one point concerning the Transcript. It is important to have a clear Transcript, that you avoid to speak at the same time as other people, so we—to prevent any overlapping.

Good. My questions to you are the following, very easy questions:

The first, even if you have answered it in your Witness Statement, if you can, in broad terms, recall us your involvement in the problems in the chronology of the facts that have led us here at
issue.

THE WITNESS: Mr. President, I was the Prime Minister of Romania between December 2008 until 6th of February 2012. On that capacity, I was also, besides all other important issues of the Government, to be aware of the Project of Rosia Montana. And in my Government program in 2009, we had a very specific point in the program concerning the Rosia Montana Project, so that was my overall capacity.

Within the framework of very difficult economical crisis in Romania, in Europe, and in the world. It was a very difficult period of time as it was the worst crisis in Romania for the last 70 years, so we had to deal with a lot of issues from the economical side but also from the social side, and public pressure concerning the austerity measures, jobs, and investments.

PRESIDENT TERCIER: Okay. Have you been in any way involved in the Project before your term—?

THE WITNESS: No. I did not have any capacity, legal capacity, to be involved before.

PRESIDENT TERCIER: Okay. And after that,
after you quit--

THE WITNESS: After that, nothing.

PRESIDENT TERCIER: Nothing. Good.

My second question to you--probably they will come back to these points certainly over the course of the testimony--

THE WITNESS: Of course.

PRESIDENT TERCIER: --but my question to you is concerning the Witness Statement. Can you, in a few words, tell us how it has been prepared, your Witness Statement, what you have.

THE WITNESS: Mr. President, I was asked by the lawyers to give an answer to some questions. When I was asked, I said "of course," and I provided my answer on my best knowledge concerning the issue--the subject of this issue.

PRESIDENT TERCIER: And it has been prepared based on that by the counsel?

THE WITNESS: The questions were prepared by the counsel, the answers belongs to me entirely.

PRESIDENT TERCIER: Good. Okay. Fine.

THE WITNESS: And also, I was adding
everything I knew concerning the subject on my answers, but all the answers I provided offering the best I recall—the best of my understanding.

PRESIDENT TERCIER: All right. Thank you very much.

Co-Arbitrators? No question in that in, please, Ms. Radjai.

MS. RADJAI: Thank you, Mr. President.

THE WITNESS: Thank you.

DIRECT EXAMINATION
PRESIDENT TERCIER: Thank you very much.

Mrs. Radjai, you have the floor for the redirect.

MS. RADJAI: We may have a couple of questions. I'm not sure.

Do you mind if we take a five-minute break just to consult and see if we have anything?

PRESIDENT TERCIER: Take the break. Five minutes.

MS. RADJAI: Okay.

(Brief recess.)

PRESIDENT TERCIER: So, let's resume.
Ms. Radjai, you have the floor.

MS. RADJAI: Thank you, Mr. President.

REDIRECT EXAMINATION
QUESTIONS FROM THE TRIBUNAL
PRESIDENT TERCIER: I would like to keep you just for a few moments for some points.

The first point, you may have received the letter from ICSID concerning the statement of the EC Commission. We have decided that this document will be in the file. But you will also see that you have--that you--the decision whether you want to
comment yes or no, and we will have to discuss--if
yes, if you would wish to--the timing, and we can
discuss it at the end.

At the first point, I think you will receive
the declaration, if you have not already. Sent it
over. It will be received. So, you have your
homework for the weekend.

Second--no. It's a joke. I hope so. On
Saturday afternoon, I have the right to make a joke.

Second point, we have--our Secretary was
kind enough to prepare a new tentative schedule for
Monday, going step by step. And it would indeed be
Mr. Ariton, Ms. Mocanu, Ms. Serban, and Mr. Jurca.

You made a reservation or you had to make
sure that they would be available. Is it the case?

DR. HEISKANEN: We haven't been able to
check that during the brief break that we had, but we
will report to the Tribunal as soon as we can this
afternoon.

PRESIDENT TERCIER: Okay. May I urge you to
find out, if possible?

DR. HEISKANEN: As soon as possible, yes.
PRESIDENT TERCIER: Otherwise, really, we will be in difficulty. I'm sure they will because they had also to be present during the hearings.

That's the Point Number 2. I do not see any further point on my side.

Do you have a point that you would like to raise?

MR. LEW: No, Mr. President.

PRESIDENT TERCIER: And on your side?

DR. HEISKANEN: Nothing from us. Thank you.

PRESIDENT TERCIER: Thank you very much. So my last point is to wish you a very pleasant weekend.

Thank you very much, all of you.

(Whereupon, at 12:22 p.m., the Hearing was adjourned until 9:00 a.m., Monday, December 9, 2019.)
CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

DAVID A. KASDAN
CERTIFICATE OF REPORTER

I, Margie Dauster, RMR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

__________________________________________
MARGIE DAUSTER