

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Angel Samuel Seda and others

v.

Republic of Colombia

(ICSID Case No. ARB/19/6)

PROCEDURAL ORDER NO. 7

Members of the Tribunal

Prof. Dr. Klaus Sachs, President of the Tribunal

Prof. Hugo Perezcano Díaz, Arbitrator

Dr. Charles Poncet, Arbitrator

Secretary of the Tribunal

Ms. Sara Marzal

1 December 2021

WHEREAS by email dated 15 October 2021, Mr. Victor Mosquera Marín wrote to the ICSID Secretariat and the Members of the Tribunal *"to submit an Amicus Curiae in favor of the Republic of Colombia"*, enclosing a 19-page submission ("**Mosquera Submission**") and a list of supporting evidence;

WHEREAS on 16 October 2021, following instructions from the Tribunal, the ICSID Secretariat communicated the Mosquera Submission to the Parties and invited them to submit any comments they may have by 25 October 2021;

WHEREAS on 17 October 2021, Claimants informed the Tribunal that they were unable to access the evidence referenced in the Mosquera Submission. On the following day, ICSID informed the Parties that it had requested said documents from Mr. Mosquera;

WHEREAS on 25 October 2021, the ICSID Secretariat informed the Parties that it had been able to obtain the evidence referenced in the Mosquera Submission and that the Tribunal extended the deadline to submit comments until 1 November 2021;

WHEREAS on 1 November 2021, Claimants submitted their comments on the Mosquera Submission, requesting the Tribunal to *"disregard the Mosquera Submission as an amicus brief"*;

WHEREAS on 1 November 2021, Respondent submitted its comments on the Mosquera Submission, submitting that *"it is within the Tribunal's discretion to admit the NDP Submission on the record"*;

WHEREAS on 3 November 2021, Respondent filed additional observations and on 8 November 2021, Claimants replied to Respondent's additional observations.

A. Introduction

1. This procedural order deals with the question whether the Mosquera Submission may be admitted as an *amicus curiae* submission of a non-disputing party in the sense of Article 10.20.3 of the US-Colombia Trade Promotion Agreement (the "**Treaty**") and ICSID Arbitration Rule 37(2).
2. The Tribunal will first summarize the Mosquera Submission to the extent necessary to decide on its admissibility (**B.**) and the Parties' comments in this regard (**C.**). Thereafter, the Tribunal will consider whether to admit the Mosquera Submission as *amicus curiae* submission of a non-disputing party (**D.**).

B. Summary of the Mosquera Submission

3. Mr. Mosquera submits that he is a Colombian lawyer and the founder of the law firm Víctor Mosquera Marín Abogados SAS in Bogotá, Colombia.
4. Mr. Mosquera describes the purpose of his submission as "*providing relevant information and necessary evidence that shows that Mr. Ángel Samuel Seda has given false testimony in this lawsuit, not only generating serious damage to [Mr. Mosquera's] human rights to dignity, honor, good name, and [his] professional work as a lawyer, but shows that the structural basis of the claim is built on false information that seeks to mislead the Arbitrators.*"
5. Mr. Mosquera contends that on 30 November 2015, his law firm assumed the defense of Mr. Iván López Vanegas and his family for the kidnapping and disposition of their lands by a criminal organization known as "*Oficina de Envigado*". Mr. Mosquera claims that he represents Mr. López Vanegas in proceedings before the Inter-American Commission on Human Rights, the Superior Court of Bogotá, the Colombian criminal courts and vis-à-vis the Attorney General's office.
6. Mr. Mosquera asserts that Mr. Seda has generated serious damage to Mr. Mosquera's human rights and professional reputation and mislead the Tribunal on the facts upon which his claims in this arbitration are based, namely: (i) the alleged extortion suffered by Mr. Seda; (ii) the veracity of the kidnapping of Mr. Sebastián López; (iii) inconsistencies in Mr. Seda's story; and (iv) the human rights obligations of Mr. Seda's Royal Property Group.
7. Mr. Mosquera's submission is accompanied by 28 factual exhibits.

C. Summary of the Parties' comments

I. Claimants' comments

8. Claimants request that the Tribunal disregard the Mosquera Submission as an *amicus curiae* brief. In the alternative, Claimants request that if the Tribunal were to permit Mr. Mosquera to participate as *amicus curiae* in this arbitration, he must provide an undertaking to comply with the Tribunal's decision on costs.
9. Claimants submit that Mr. Mosquera's submission should be disregarded on the basis that he did not apply for leave to submit an *amicus curiae* brief and did not establish the requirements set forth in the Treaty and the ICSID Convention, as it is the applicant's burden.
10. In any event, Claimants submit that Mr. Mosquera fails to meet the criteria for *amicus curiae* submissions under the Treaty and ICSID Arbitration Rule 37(2).

11. *First*, Claimants argue that Mr. Mosquera’s views cannot assist the Tribunal as he refers to matters – or purports to provide evidence on issues – that are not within the scope of the dispute, namely (i) Mr. Seda’s extortion; (ii) the veracity of the kidnapping story by Mr. López Vanegas; and (iii) allegations that Mr. Seda failed to accord certain human rights to Mr. López Vanegas.
12. In Claimants’ view, the Mosquera Submission largely corroborates the events surrounding Mr. Seda’s extortion and provides the same correspondence as already adduced by Claimants. Claimants argue that Mr. Mosquera’s unsupported and unsworn assertion that he and his client did not extort Mr. Seda has little probative value without the possibility to cross-examine him.
13. Furthermore, Claimants argue that the “*veracity of the kidnapping*” of Mr. López Vanegas’ son is not in dispute in the arbitration as Respondent puts forth alternate rationales for the Asset Forfeiture Proceedings.
14. Claimants also reject Mr. Mosquera’s allegations that Mr. Seda violated the human rights of Mr. López Vanegas (e.g., by refusing to negotiate with him and failing to detect his relationship to the Meritage Property). In Claimants’ view, these allegations fall outside the scope of the dispute.
15. *Second*, Claimants contend that Mr. Mosquera has no significant interest in this arbitration as he merely attempts to “*rehabilitate his image after his dalliance with a narco-trafficker and extortionist*”. According to Claimants, this arbitration does not concern Mr. Mosquera’s rights in any way.
16. *Third*, Claimants argue that the Mosquera Submissions threatens to disrupt the proceeding and prejudice Claimants by forcing them to divert substantial time and resources to rebut Mr. Mosquera’s allegations. In Claimants’ view, this would create a procedural imbalance as they would have to respond to the arguments of two parties.
17. *Fourth*, Claimants submit that Mr. Mosquera’s failure to “*identify any person or entity that has provided, or will provide, any financial or other assistance*” under the Treaty, by itself, precludes the admission of his submission.
18. Claimants submit that the procedurally appropriate manner for Mr. Mosquera to make his submissions would have been to appear as Respondent’s witness, not as *amicus curiae*. Claimants argue that his statements – such as his account of otherwise unrecorded meetings – are “*of no value unless he swears to them and is ready to defend them through relevant disclosures and upon cross-examination*”.

19. Claimants further argue that the circumstances of the Mosquera Submission are highly unusual. Among other things, Claimants submit that there is no plausible reason for Mr. Mosquera to support Respondent's position in this case as his client's interests are not aligned with those of Respondent. Furthermore, Claimants argue that Mr. Mosquera did not explain what materials of this arbitration he had reviewed and how he came into possession of some of the documents attached to his submission, including the recordings of interviews conducted by the Attorney General's Office in criminal investigation no. 70278 that Respondent did not produce in these proceedings.
20. Finally, in reply to Respondent's additional observations of 3 November 2021, Claimants reject Respondent's assertion that they had improperly commented on the *amicus* submission. In their view, the Tribunal's request for comments was not limited and it granted the Parties an additional week to prepare their comments after the accompanying evidence to the Mosquera Submission became available. Accordingly, Claimants submit that Respondent's request to strike from the record some of Claimants' comments should be denied.

II. Respondent's comments

21. Respondent takes the view that it is within the Tribunal's discretion to admit the Mosquera Submission on the record, if the Tribunal determines that it might be of assistance in its analysis of the dispute and that Mr. Mosquera has a significant interest in intervening as *amicus curiae* in these proceedings.
22. Respondent submits that it had not been contacted by Mr. Mosquera in connection with these proceedings and was unaware of his intention to make such a submission until receiving the communication of the ICSID Secretariat of 16 October 2021.
23. According to Respondent, the Tribunal may admit the submission after determining that the three conditions set forth in ICSID Arbitration Rule 37(2) are met and ensuring that the admission does not disrupt the proceedings or unduly or unfairly prejudice either Party.
24. Respondent submits that the Mosquera Submission provides information pertaining to the investigations carried out by the Attorney General's Office regarding Mr. López Vanegas' complaint of land dispossession and offers Mr. Mosquera's own rendition of the facts regarding his and his client's communications with Mr. Seda contradicting Claimants' allegations of extortion. Respondent argues that the Mosquera Submission seems, on its face, to concern factual or legal issues related to the arbitration and address matters within the scope of this dispute.

25. As regards the required significant interest of the non-disputing party, Respondent notes that investment tribunals have required the applicant's interest to go beyond a mere general interest in the arbitration. Respondent argues that on its face, Mr. Mosquera's submission appears to meet this test but it remains to be determined by the Tribunal whether Mr. Mosquera's interest meets the requirement of significance under the ICSID Arbitration Rules. Respondent suggests that the Tribunal should evaluate the specificity and significance of Mr. Mosquera's interests "*in view of the circumstances of the case and the impact that the Tribunal's award might have on said interests.*"
26. In the event that the Tribunal decides to admit the Mosquera Submission, Respondent submits that such admission should be subject to two provisos: first, the admission may not unduly disrupt the arbitral proceedings; second, the admission is subject to Mr. Mosquera's identification of any person or entity that has provided, or will provide, any financial or other assistance in preparing the submission.
27. In its additional observations on Claimants' comments of 3 November 2021, Respondent rejects Claimants' suggestions that it improperly attempted to introduce Mr. Mosquera's witness testimony or the accompanying evidence in these proceedings. Respondent recalls that it had not been in contact with Mr. Mosquera in connection with these proceedings prior to the filing of his submission and that its counsel is not privy to the information contained in the file of criminal investigation no. 70278.
28. Finally, Respondent requests the Tribunal to strike from the record sections 3 to 5 of Claimants' comments of 1 November 2021. In Respondent's submission, these unsolicited submissions touch upon the merits of the dispute which, in its view, undermines the equality of arms in the arbitration and places an undue burden on Respondent as it has not been in a position to address Claimants' additional submissions on the merits.

D. The Tribunal's Analysis

29. The Parties agree that Article 10.20.3 of the Treaty and ICSID Arbitration Rule 37(2) set out the applicable legal standard for the Tribunal to accept and consider an *amicus curiae* submission from a person or entity that is not a disputing party.

30. Article 10.20.3 of the Treaty reads in its relevant part:

Article 10.20: Conduct of the Arbitration

[...]

3. The tribunal shall have the authority to accept and consider amicus curiae submissions from a person or entity that is not a disputing party. Each submission shall identify the author and any person or entity that has provided, or will provide, any financial or other assistance in preparing the submission.

31. ICSID Arbitration Rule 37(2) provides:

Rule 37 Visits and Inquiries; Submissions of Non-disputing Parties

[...]

(2) After consulting both parties, the Tribunal may allow a person or entity that is not a party to the dispute (in this Rule called the “non-disputing party”) to file a written submission with the Tribunal regarding a matter within the scope of the dispute. In determining whether to allow such a filing, the Tribunal shall consider, among other things, the extent to which:

- (a) the non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;*
- (b) the non-disputing party submission would address a matter within the scope of the dispute;*
- (c) the non-disputing party has a significant interest in the proceeding.*

The Tribunal shall ensure that the non-disputing party submission does not disrupt the proceeding or unduly burden or unfairly prejudice either party, and that both parties are given an opportunity to present their observations on the non-disputing party submission.

32. At the outset, the Tribunal notes that ICSID Arbitration Rule 37(2) requires a non-disputing party to apply for leave before submitting a written submission. Mr. Mosquera has not complied with that requirement as he filed his written submission, supported by accompanying evidence, without seeking prior leave from the Tribunal.

33. In his submission, Mr. Mosquera does not request any relief from the Tribunal. Nevertheless, the Tribunal considers that it is sufficiently clear both from the submission itself and the accompanying email (bearing the subject line "*Amicus Curiae in favor of the Republic of Colombia*") that it was Mr. Mosquera's intention to make an *amicus curiae* submission, as envisaged under the Treaty and the ICSID Arbitration Rules, and to have it admitted to the record of this arbitration. While Mr. Mosquera would have been required to seek leave before filing an *amicus curiae* submission, the Tribunal considers that his submission should not be disregarded for that reason alone. Consequently, the Tribunal will assess the admissibility based on a *prima facie* review of the submission.
34. In exercising its discretion whether to admit the *amicus curiae* submission, the Tribunal will, as suggested by both Parties, consider the criteria explicitly mentioned in Article 10.20.3 of the Treaty and ICSID Arbitration Rule 37(2).

I. Disclosure of financial or other assistance

35. Article 10.20.3 of the Treaty requires disclosure of "*any person or entity that has provided, or will provide, any financial or other assistance in preparing the submission.*" As both Parties pointed out in their comments on the Mosquera Submission, Mr. Mosquera has not complied with this Treaty requirement.
36. In particular, it remains unclear if and to what extent Mr. Mosquera's client, Mr. López Vanegas, has authorized, funded or otherwise assisted in the preparation of the submission.
37. On the one hand, Mr. Mosquera appears to have filed the submission in his own name, claiming that Mr. Seda violated Mr. Mosquera's human rights and discredited his professional work as a lawyer (Mosquera Submission, p. 4, 10-11). Furthermore, Mr. Mosquera did not explicitly indicate that he acted on behalf of his client and did not produce a power of attorney.
38. On the other hand, the Mosquera Submission makes numerous references to Mr. López Vanegas' rights (see e.g., pp. 11, 19) and the actions that Mr. Mosquera took as lawyer on behalf of his client (see e.g., pp. 5 et seq.). Moreover, Mr. Mosquera submits legal arguments as to why certain persons and entities, including Mr. Seda, were allegedly obliged to "*repair the damage caused to Mr. Iván Lopez and his family*" (Mosquera Submission, p. 18).
39. In view of this, it is not clear to the Tribunal whether Mr. Mosquera acted in his own name and/or on behalf of his client and whether he received any financial or other assistance in preparing the submission. Without disclosure of these circumstances, the Tribunal considers that the Mosquera Submission may not be admitted pursuant to Article 10.20.3 of the Treaty.

II. Address a matter within the scope of the dispute

40. Notwithstanding this, the Tribunal will analyze whether the criteria set forth in ICSID Arbitration Rule 37(2) would be fulfilled. The Tribunal will begin its analysis with the second criterion (lit. b), according to which the Tribunal shall, in exercising its discretion, consider the extent to which the non-disputing party submission would address a matter within the scope of the dispute.
41. The Mosquera Submission broadly addresses four issues: (i) the interactions between Mr. López Vanegas, Mr. Mosquera and Mr. Seda and the alleged extortion of Mr. Seda; (ii) the alleged kidnapping of Mr. López Vanegas' son; (iii) the history of the Meritage Property and the due diligence performed by Mr. Seda; and (iv) the alleged violation of the human rights of Mr. López Vanegas and his family by the Royal Property Group.
42. Based on a preliminary review of the Mosquera Submission, the Tribunal considers that issue (iv) falls outside the scope of the present dispute. The Tribunal notes that it does not fall within its jurisdiction to address any alleged human rights violations that Mr. López Vanegas and his family may have suffered by the actions or inactions of the Royal Property Group in their acquisition of the Meritage Project. Consequently, Mr. Mosquera's legal submissions on the existence of "*internal mechanisms or policies that allow respecting, protecting, remedying or claiming the violation of human rights committed against Mr. Iván López and his family, as required by international standards*" (Mosquera Submission, p. 19) do not fall within the scope of this dispute either.
43. As regards the remaining issues (i), (ii) and (iii), the Tribunal agrees with Respondent that they *prima facie* address matters within the scope of the dispute.

III. Assist in the determination of a factual or legal issue

44. Turning to ICSID Arbitration Rule 37(2) lit. a, the Tribunal will now consider whether the admission of the Mosquera Submission would assist it in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from the disputing Parties.

a) Alleged extortion of Mr. Seda

45. The Tribunal notes that both Parties have extensively addressed the interactions between Mr. Seda and Mr. López Vanegas and the alleged extortion of Mr. Seda in their written submissions (Memorial on the Merits and Damages, paras. 85 et seq.; Reply, paras. 48 et seq.; Counter Memorial, paras. 93 et seq.).

46. When it comes to Mr. Mosquera's personal recollection of meetings or other facts, the Tribunal agrees with Claimants that Mr. Mosquera would have to be called as a witness, with the possibility of testing the probity of his testimony by (cross-) examination in accordance with Section 18 of Procedural Order No. 1, if his testimony were to be considered in the Tribunal's assessment of the evidence. Insofar as Mr. Mosquera claims to have a hostile relationship with the then head of the Attorney General's Office and the then Deputy Attorney General, the documentary evidence provided by Mr. Mosquera is available in the public domain.

b) Alleged kidnapping of Mr. López Vanegas' son

47. The Tribunal notes that while Claimants argue that Respondent justified the Asset Forfeiture Proceedings against the Meritage Property with the alleged kidnapping of Mr. López Vanegas' son (Memorial on the Merits and Damages, paras. 11-12; Reply, para. 333), Respondent submits that "[w]hether Mr. López Betancur was kidnapped or not is irrelevant for purposes of the Asset Forfeiture Process" (Counter Memorial, para. 141).

48. Based on a review of the submissions currently before it, and without prejudice to any future decision on this issue, the Tribunal concludes that the question of whether Mr. López Vanegas' son was kidnapped is not in dispute between the Parties. Consequently, the Tribunal considers that Mr. Mosquera's submissions in this respect would not assist it in its analysis of the relevant factual and legal issues.

c) History of the Meritage Property and due diligence

49. Likewise, the Tribunal notes that the history of the Meritage Property and the due diligence performed by Claimants have already been discussed in the Parties' submissions in detail (Memorial on the Merits and Damages, paras. 56 et seq.; Reply, paras. 13 et seq.; Counter Memorial, paras. 68 et seq.). The Tribunal is of the view that these factual and legal issues can be adequately addressed by the Parties and their counsel and that the Mosquera Submission would not provide further assistance in the determination of these issues.

50. Insofar as Mr. Mosquera relies on newspaper articles reporting on criminal proceedings against the alleged previous owners of the Meritage Property to support his assertion that "*the property of 'Meritage' has a clear mafia tradition that gave the State of Colombia the right to start a case for domain extinction*" (Mosquera Submission, p. 10), Mr. Mosquera does not provide a perspective, particular knowledge or insight that is different from the Parties. The same applies to Mr. Mosquera's comments on a public radio interview with Mr. Seda.

51. Furthermore, the Tribunal considers that it would not be assisted by Mr. Mosquera's comments on and production of transcripts and video recordings of selected summons and interviews conducted by the Attorney General's Office in the context of criminal investigations. Mr. Mosquera does not disclose how he obtained these documents and it remains unclear if and to what extent Mr. Mosquera was personally involved in these summons and interviews and can provide a unique perspective that is different from that of the disputing Parties.
52. In these circumstances, the Tribunal concludes that Mr. Mosquera's submission would not be of assistance in the Tribunal's determination of the factual and legal issues at stake.

IV. Significant interest in the proceeding

53. Finally, the Tribunal will assess whether Mr. Mosquera has established that he has a significant interest in this arbitration as required by ICSID Arbitration Rule 37(2) lit. c.
54. In their comments on the Mosquera Submission, both Parties have stressed that the non-disputing party's interest must go beyond a mere general interest in the arbitration and relied on the decision of the *Apotex v. USA* tribunal which held:¹

To meet this requirement, the applicant needs to show that he has more than a "general" interest in the proceeding. For example, the applicant must demonstrate that the outcome of the arbitration may have a direct or indirect impact on the rights or principles the applicant represents and defends.

55. The Tribunal takes note of Respondent's submission that "it remains to be determined, in light of the specific circumstances of the case, whether Mr. Mosquera Marín's interest meets the requirement of significance under the ICSID Rules" and that "it is within the Tribunal's discretion to evaluate the specificity and significance of the interests as provided in the NDP Submission, in view of the circumstances of the case and the impact that the Tribunal's award might have on said interest" (Respondent's letter of 1 November 2021, p. 4). The Tribunal agrees with Respondent that the significance of an applicant's interest can only be evaluated in view of the specific circumstances of the case.
56. In the present case, Mr. Mosquera has motivated his submission in the following terms (Mosquera Submission, p. 4):

Thus, this time I am writing you with the purpose of providing relevant information and necessary evidence that shows that Mr. Ángel Samuel Seda has given false testimony in this lawsuit, not

¹ *Apotex Holdings Inc and Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1, Procedural Order on the Participation of the Applicant, Mr. Barry Appleton, as a Non-Disputing Party, para. 38.

only generating serious damage to my human rights to dignity, honor, good name, and my professional work as a lawyer, but shows that the structural basis of the claim is built on false information that seeks to mislead the Arbitrators.

57. Mr. Mosquera further submits that the work that he has "*carried out in keeping with an impeccable professional ethics*" is discredited in a proceeding in which he is not a party and therefore lacks the effective means to defend his reputation and good name (Mosquera Submission, p. 9 et seq.).
58. From the above, it becomes apparent that Mr. Mosquera seeks to provide the Tribunal with information showing that Mr. Seda's testimony not only violates his human rights and harms his professional reputation but also seeks to mislead the Tribunal. In the Tribunal's view, these are two distinct objectives.
59. As regards Mr. Mosquera's concern that the Tribunal should not be misled by a fact witness, the Tribunal considers that that this does not go beyond a general interest that is shared by any other person following this arbitration.
60. Regarding the alleged violation of Mr. Mosquera's human rights and his professional reputation, the Tribunal recognizes that Mr. Mosquera's name is frequently mentioned in the Parties' submissions and the underlying evidence and that Claimants' accusations against him are of a serious nature. The Tribunal accepts that these allegations could potentially affect Mr. Mosquera's good name and his professional reputation as a lawyer.
61. Yet the Tribunal considers that this possibility does not reflect a significant interest pursuant to ICSID Arbitration Rule 37(2) lit c and does not justify admitting him as *amicus curiae*. This is for the following reasons:
62. First, the Tribunal is not called upon passing judgment on Mr. Mosquera's work or professional conduct as a lawyer. Rather, the Tribunal must decide whether it has jurisdiction over Claimants' claims and whether Claimants are entitled to compensation for alleged violations of the Treaty. Mr. Mosquera has not sufficiently established that the Tribunal's conclusions on these questions will have any direct or indirect impact on him.
63. Second, this Tribunal is neither the competent nor the appropriate dispute resolution body to address Mr. Mosquera's grievances against Mr. Seda. The Tribunal does not consider it to be the purpose of *amicus curiae* submissions in investor-State disputes to permit individuals that are not a party to the dispute to reply to submissions of the disputing Parties in which their name is mentioned and which they consider defamatory. While the Tribunal understands Mr. Mosquera's wish to address the allegations against him, it bears noting that he

would have the possibility to seek redress for the alleged violation of his rights and the alleged damage to his professional reputation in other fora, e.g., before the domestic courts in Colombia or the United States of America.

64. The Tribunal therefore concludes that Mr. Mosquera has not shown a significant interest in these proceedings. Mr. Mosquera's submission does not meet the conditions set out in Article 10.20.3 of the Treaty and ICSID Arbitration Rule 37(2). Consequently, neither the Mosquera Submission nor its accompanying evidence shall be admitted to the record.

V. Respondent's request to strike certain parts of Claimants' comments from the record

65. As an ancillary issue, the Tribunal still has to decide on Respondent's request to strike from the record Sections 3 to 5 of Claimants' comments dated 1 November 2021. In Respondent's view, these sections go beyond the scope of the admissibility of the Mosquera Submission and touch upon the merits of the dispute. By contrast, Claimants argue that these sections are relevant since the issues of admissibility and the veracity of Mr. Mosquera's submission are inextricably intertwined.
66. By email dated 16 October 2021, the Tribunal invited the Parties "*to submit any comments they may have on Mr. Mosquera Marín's communication*". The Tribunal notes that Sections 3 to 5 of Claimants' comments "*address Mr. Mosquera's assertions*" in substance "[n]otwithstanding the inadmissibility and impropriety of the Mosquera Submission".
67. The Tribunal agrees with Claimants that given Mr. Mosquera's decision not to seek leave before filing his submission, the issue of its admissibility could not be examined in isolation from its content. Yet in light of the Tribunal's decision not to admit the Mosquera Submission (or the accompanying evidence), the Tribunal believes that these comments are no longer needed and, absent the documents referred to therein, there is no reason for them to remain on the record either.

THE TRIBUNAL HEREBY ORDERS:

68. Based on the foregoing, the Tribunal decides as follows:

- I. Mr. Mosquera's submission of 15 October 2021 and its accompanying evidence attached are not admitted to the record.
- II. Mr. Mosquera shall be informed of the Tribunal's decision and provided with a copy of this procedural order.
- III. Sections 3 to 5 of Claimants' comments dated 1 November 2011 are stricken from the record.

Place of arbitration (legal seat): Washington, D.C.

[Signed]

Professor Dr. Klaus Sachs
(Presiding Arbitrator)

On behalf of the Tribunal