

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Occidental Petroleum Corporation and Occidental Exploration and Production Company
v.
Republic of Ecuador
(ICSID Case No. ARB/06/11) – Annulment Proceeding

PROCEDURAL ORDER NO. 1

Members of the ad hoc Committee

Professor Juan Fernández-Armesto, President
Judge Florentino P. Feliciano
Mr. Rodrigo Oreamuno Blanco

Secretary of the ad hoc Committee

Mr. Gonzalo Flores

Table of Contents

1.	Applicable Arbitration Rules	2
2.	Constitution of the Committee and Members' Declarations	2
3.	Fees and Expenses of the Committee Members	3
4.	Apportionment of Costs and Advance Payments to ICSID	3
5.	Presence and Quorum	4
6.	Decisions of the Committee.....	4
7.	Delegation of Power to Fix Time Limits	4
8.	Representation of the Parties	4
9.	Place of Proceeding.....	5
10.	Procedural Language(s)	5
11.	Means of Communication and Copies of Instruments.....	6
12.	Written and Oral Procedures.....	8
13.	Schedule of Written Pleadings.....	8
14.	Evidence: Witnesses and Experts, Written Statements and Reports, Supporting Documentation.....	9
15.	Hearings	9
16.	Pre-Hearing Organizational Meetings	10
17.	Records of Hearings.....	10
18.	Publication	10
19.	Other Matters	10

Introduction

The first session of the Committee was held on Monday, March 25, 2013, from 9am (EDT) to 10:20am (EDT), by teleconference, with the agreement of the parties.

Participating in the conference were:

Members of the Committee

Prof. Juan Fernández -Armesto, President of the Committee
Judge Florentino P. Feliciano, Member of the Committee
Mr. Rodrigo Oreamuno Blanco, Member of the Committee

ICSID Secretariat

Mr. Gonzalo Flores, Secretary of the Committee

On behalf of the Republic of Ecuador

Dra. Christel Gaibor, Procuraduría General del Estado
Dra. Diana Moya Dávalos, Procuraduría General del Estado
Mr. George von Mehren, Squire Sanders LLP
Mr. Stephen P. Anway, Squire Sanders LLP
Prof. Eduardo Silva Romero, Dechert LLP
Prof. Pierre Mayer, Dechert LLP

On behalf of Occidental Petroleum Corporation and Occidental Exploration and Production

Mr. David W. Rivkin, Debevoise & Plimpton LLP
Ms. Marjorie J. Menza, Debevoise & Plimpton LLP
Mr. Gaëtan J. Verhoosel, Covington & Burling LLP
Ms. Carmen Martinez, Covington & Burling LLP
Ms. Laura C. Abrahamson, Associate General Counsel, Occidental Petroleum Corporation

The President of the Committee opened the session at 9am (EDT) and welcomed the participants. The President introduced the Committee and the Secretary of the Committee and the parties introduced their respective teams.

Following an invitation from the President of the Tribunal, the parties confirmed not having any items to add to the Agenda (Annex 1).

The Committee and the parties considered the following:

- The Agenda adopted by the Committee (Annex 1) that corresponds to the Draft Agenda circulated by the Secretary on Monday, February 25, 2013.

- The Draft Agenda received from the parties on Monday, March 18, 2013 (Annex 2), indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

The parties confirmed that the joint communication of Monday, March 18, 2013 properly reflects their agreements.

The President of the Committee suggested, and the parties agreed, to devote the session to the three items in the Agenda over which they had not been able to agree.

The parties' agreements and the Committee's decisions are recorded in the Procedural Order below.

The session was adjourned at 10:20am (EDT).

Audio recordings of the session were made and deposited in the archives of ICSID and circulated to the parties and the Committee members. Verbatim transcripts will be made from the audio recordings, and circulated to the parties and the members of the Committee, with the agreement of the parties.

ORDER

Pursuant to ICSID Arbitration Rule 19, this First Procedural Order sets out the Procedural Rules that the Republic of Ecuador and Occidental Petroleum Corporation and Occidental Exploration and Production have agreed and that the *ad hoc* Committee has determined shall govern this arbitration.

1. Applicable Arbitration Rules

Convention Article 44 and Arbitration Rule 53

1.1 The proceeding will be conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

2. Constitution of the Committee and Members' Declarations

Arbitration Rules 6 and 52(2).

2.1 The Committee was constituted on Friday, January 18, 2013 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Committee was properly constituted and that they had no objections to the appointment of any Member of the Committee.

2.2 The Members of the Committee timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of

these declarations were distributed to the parties by the Secretary on Friday, January 18, 2013.

3. Fees and Expenses of the Committee Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

3.1 The fees and expenses of each Member of the Committee shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

3.2 Under the current Schedule of Fees, each Member of the Annulment Committee shall receive (subject to any modification of such Schedule):

3.3 A fee of US\$3,000, or such other fee as may be set forth from time to time in ICSID's Schedule of Fees, for each day of meetings or each eight hours of other work performed in connection with the proceedings or pro rata; and

3.4 A *per diem* allowance and reimbursement of travel and other expenses within the limits set forth in ICSID Administrative and Financial Regulation 14.

3.5 The Members of the Committee will submit their claims for fees and expenses to the ICSID Secretariat on a quarterly basis.

4. Apportionment of Costs and Advance Payments to ICSID

Convention Article 61(2); Arbitration Rule 2; Administrative and Financial Regulation 14 (3) (e).

4.1 Ecuador will be responsible for making the advance payments requested by the ICSID Secretariat to cover expenses following constitution of the Committee, without prejudice to the final decision of the Committee, without prejudice to the final decision of the Committee as to the allocation of costs.

4.2 The parties may present, in addition to the information required by Arbitration Rule 28(2), the parties' positions as to how and by whom costs should be paid and arguments supporting those positions.

4.3 By letter of Thursday, January 31, 2013, ICSID requested the Republic of Ecuador to pay US\$250,000 (two hundred and fifty thousand United States dollars) to defray the initial costs of the proceeding. ICSID received Ecuador's payment on Wednesday, February 20, 2013.

4.4 ICSID will request further advances as needed. Such requests will be accompanied by an interim statement of account providing details of the direct costs of the proceeding, including the total fees and expenses

of all arbitrators. At the end of the case, the financial statement will include a breakdown of each arbitrator's fees and expenses.

5. Presence and Quorum

Arbitration Rules 14(2) and 20(1)(a)

5.1 The presence of all Members of the Committee constitutes a quorum for its sittings.

6. Decisions of the Committee

Arbitration Rule 16

6.1 Decisions of the Committee shall be taken by a majority of the Members of the Committee.

6.2 The Committee's decisions on procedural matters may be communicated to the parties by correspondence, in accordance with Arbitration Rule 16(2). The president of the Committee will have the power to sign procedural orders on behalf of the Committee.

7. Delegation of Power to Fix Time Limits

Arbitration Rule 26(1)

7.1 The President has the power to fix and extend time limits for the completion of the various steps in the proceeding.

7.2 In exercising this power, the President shall consult with all Members of the Committee.

7.3 Extensions of time shall be granted by the Committee at its discretion, and provided that a request is submitted before or, where this is impossible, in special circumstances immediately after the event preventing a party from complying with the deadline. The parties may also decide between themselves to grant extensions of time, on the basis of mutual courtesy, subject to the consent of the Committee.

8. Representation of the Parties

Arbitration Rule 18

8.1 Each party shall be represented by its respective counsel listed in Annex 2 attached to this Order, to whom all notices and communications shall be sent, and may designate additional agents, counsel, or advocates by notifying the ICSID Secretariat of such designation.

9. Place of Proceeding

Convention Articles 62 and 63; Arbitration Rule 13(3); Administrative and Financial Regulation 26

9.1 The seat of ICSID in Washington D.C. shall be the place of the proceeding. The Committee can hold hearings at any other place that it deems appropriate after consulting with the parties.

9.2 The Committee may deliberate at any place it deems convenient.

9.3 It was agreed that the hearings will be held where the Committee deems it convenient (likely Washington D.C. and/or Paris).

10. Procedural Language(s)

Arbitration Rules 20(1)(b) and 22; Administrative and Financial Regulation 30(3) and (4);

10.1 The parties agree that the languages of the proceedings would be Spanish and English (the “**Procedural Languages**”).

10.2 The parties will file their pleadings in English and, if they wish, in Spanish. If a Spanish version is not filed simultaneously, a courtesy translation shall be provided within two weeks.

10.3 Documents filed in any language different from the Procedural Languages must be accompanied by a translation into Spanish and English. A document in either Spanish or English may be required to be translated into the other language within two weeks, at the request of the other party or of the Committee. If the document is lengthy, it is sufficient if only the relevant parts are translated, provided that the Committee may require a fuller or a complete translation at the request of any party or upon its own initiative. Translations need not be certified, unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.

10.4 Oral arguments and testimony, if any, shall be heard in Spanish and English (other than the procedural conference of Monday, March 25, 2013, which shall be in English as agreed by the parties). Simultaneous interpretation of all hearings shall be arranged by the ICSID Secretariat and charged to the case account, without prejudice to the Committee’s final allocation of costs. The parties shall inform the ICSID Secretariat of interpretation requirements at least two weeks in advance of the hearing.

11. Means of Communication and Copies of Instruments

Arbitration Rules 20(1) (d) and 23; Administrative and Financial Regulations 24 and 30.

Communications:

11.1 Written communications in the case shall be transmitted by email or other electronic means to the parties, the ICSID Secretariat, and the Committee.

11.2 Electronic versions of communications ordered by the Committee to be filed simultaneously shall be transmitted to the Secretariat only, which shall send them to the Committee and to the parties.

11.3 The Secretariat shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Committee.

11.4 The email addresses of the Members of the Committee are:

Prof. Juan Fernández Armesto jfa@jfarmesto.com	Judge Florentino P. Feliciano fpfeliciano@syciplaw.com	Mr. Rodrigo Oreamuno B. roreamuno@fayca.com
--	---	---

Instruments/Submissions:

The parties shall, by the relevant filing date:

11.5 Submit by email to the Secretariat, the opposing Party, and the Committee an electronic version of the submission.

11.6 Submit by courier to the Secretariat the following, within four business days:

11.6.1 One hard copy of the entire submission in whichever format the Committee prefers; and

11.6.2 Two USB drives, or CD-ROMs or DVDs, with full copies of the entire submission.

11.7 At the same time, courier to the opposing party at the addresses indicated under paragraph 8 and each Member of the Committee at the addresses indicated below:

11.7.1 One hard copy of the entire submission in whichever format the Committee prefers; and

11.7.2 One USB drive, or CD-ROMs or DVDs, with a full copy of the entire submission.

11.8 The mailing addresses of the Members of the Committee are:

Prof. Juan Fernández-Armesto Armesto & Asociados General Pardiñas, 102 28006 Madrid, Spain	Judge Florentino P. Feliciano SyCip Salazar Hernandez & Gatmaitan 7/F SyCipLaw Center 105 Paseo de Roxas 1226 Makati City, Philippines	Mr. Rodrigo Oreamuno Facio & Cañas 300 este del periódico La República frente Hotel Villa Tournón San José, Costa Rica
---	--	--

11.9 For email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Mr. Gonzalo Flores
ICSID
MSN U3-301
3301 Pennsy Dr.
Landover, MD 20785-1606
USA
Tel.: + 1 (202) 458-1505
Fax: + 1 (202) 522-2615/2077
Email: gflores@worldbank.org

11.10 For local messenger deliveries, the contact details are:

Mr. Gonzalo Flores
1800 G Street, NW (“U Building”), MSN3-066-211
3rd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-1505

11.11 Electronic versions of pleadings and exhibits shall be text searchable (i.e., OCR PDF or Word)

11.12 The paragraphs (or groups of paragraphs) of all written submissions shall be numbered consecutively and the submissions shall include a table of contents.

11.13 The submissions to the Committee shall be accompanied by a list specifying the nature of each exhibit and/or legal authority, its date and its author. The list of exhibits and authorities shall be updated with each new submission in these proceedings.

12. Written and Oral Procedures

Arbitration Rules 20(1) (e) and 29

12.1 The proceeding shall consist of a written phase followed by an oral phase.

12.2 The Parties and the Committee will discuss at the hearings whether to have post-hearing submissions.

13. Schedule of Written Pleadings

Arbitration Rules 20(1) (c) and 31

(a) Stay of Enforcement

13.1 The schedule for the Stay of enforcement issue shall be as follows:

13.1.1 Ecuador shall file a Response to Claimant's request to lift the provisional stay or to condition the stay on the posting of security on Friday, **April 5, 2013 by 6 p.m. CET**;

13.1.2 Claimants shall file a Reply on Monday, **April 22, 2013**; and

13.1.3 Ecuador shall file a Rejoinder on Monday, **May 6, 2013**.

(b) Annulment

13.2 The schedule for the annulment proceeding shall be as follows:

13.2.1 The Republic of Ecuador shall file a Memorial on Annulment on **Wednesday, July 31, 2013**.

13.2.2 Occidental Petroleum Corporation and Occidental Exploration and Production shall file a Counter-Memorial on Annulment on **Tuesday, October 1, 2013**.

13.2.3 The Republic of Ecuador shall file a Reply on Annulment on **Tuesday, December 31, 2013**.

13.2.4 Occidental Petroleum Corporation and Occidental Exploration and Production shall file a Rejoinder to the Reply on Annulment on **Friday, February 28, 2014**.

14. Evidence: Witnesses and Experts, Written Statements and Reports, Supporting Documentation

Convention Article 43(a); Arbitration Rules 24 and 33-36

14.1 ICSID Arbitration Rules 35 and 36 will be applicable. Should either party wish to introduce new witness statements or expert reports, that party shall, as promptly as possible, file a request to the Committee to that effect. In accordance with ICSID Arbitration Rule 34, the Committee will promptly decide on the admissibility of the new witness statements and/or expert reports, after hearing from both parties.

14.2 Documents and evidence admitted in the original arbitration hearing are admitted in this proceeding. Should either party wish to introduce new documents or evidence, other than legal authorities, that party shall, as promptly as possible, file a request to the Committee to that effect. In accordance with ICSID Arbitration Rule 34, the Committee will promptly decide on the admissibility of the new documents and/or evidence, after hearing from the parties.

14.3 New legal authorities shall be admissible and shall be annexed to the submissions presented by the parties

15. Hearings

Arbitration Rule 13(2)

(a) Stay of Enforcement

15.1 The Hearing on the stay of enforcement issue will be held on Monday, May 13, 2013 in Paris (France).

(b) Annulment

15.2 The hearing on annulment will be held from Monday, April 7, 2014 through Wednesday, April 9, 2014, with Thursday, April 10 being kept as a day of reserve.

16. Pre-Hearing Organizational Meetings
Arbitration Rule 21(1)

16.1 The parties should use their best efforts before a scheduled hearing to agree on the organizational aspects of such hearing (especially in connection with the marshaling of the evidence). For that purpose, the parties should aim to hold a conference call with the Secretariat and the President of the Committee at least a month before any hearing. Such meetings may be conducted by telephone or video link.

17. Records of Hearings
Arbitration Rule 20(1)(g)

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

17.2 Verbatim transcript(s) in the Procedural Languages shall be made of any sessions. 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. Publication
*Convention Article 48(5), Administrative and Financial Regulation 22,
Arbitration Rule 48(4)*

18.1 Any decision of the Committee may be published by the Centre.

19. Other matters

19.1 The parties confirmed not having any other matters to discuss discussion at the First Session.

[signed]

Prof. Juan Fernández-Armesto
President of the Committee
Date: April 10, 2013