

ICSID Case No. ARB/07/5

**ABACLAT AND OTHERS
(CLAIMANTS)**

and

**THE ARGENTINE REPUBLIC
(RESPONDENT)**

PROCEDURAL ORDER NO. 14

1 NOVEMBER 2012

IN VIEW OF:

- A. The Minutes of the First Session of 10 April 2008, which provide in sections 7 and 9 as follows:

"7. Procedural Language (Arbitration Rules 29(1)(b) and 22)

In accordance with ICSID Arbitration Rule 22, the Claimants selected English and the Respondent selected Spanish as the procedural language. The parties could not agree on the issue of translation of pleadings into the other party's selected procedural language. The Tribunal, after careful consideration of the parties' positions on the issue, decided as follows:

- a. The languages of the proceedings will be English and Spanish;*
- b. The Claimants will file their pleadings in English and the Argentine Republic will file its pleadings in Spanish;*
- c. All memorials and accompanying witness statements and expert reports will be translated by the submitting party into the other party's selected procedural language;*
- d. All translations will be filed together with the memorials;*
- e. The authenticity of the translations will be presumed, unless challenged by the non-submitting party.*

The accompanying documentation (with the exceptions indicated above), provided that it is in one of the selected procedural languages, will be filed in its original language. The Tribunal may require translations from the parties whenever it deems them necessary.

The Tribunal will render its decisions in both languages. The communications from the Secretariat to the parties will be made in either language. The Secretariat will arrange simultaneous interpretation services from and into English and Spanish for future hearings.

[...]

9. Means of Communication and Copies of Instruments (Arbitration Rules 20(1)(d) and 23; Administrative and Financial Regulations 24 and 30)

It was agreed that routine administrative or procedural correspondence would be transmitted by fax or email to the Secretary of the Tribunal and simultaneously to counsel for the opposing party. The Secretary of the Tribunal will circulate these communications to the Tribunal by email.

It was also agreed that each substantive written submission will be filed on the date due by:

- (a) submitting to the Secretary of the Tribunal and counsel for the opposing party an email attaching an electronic version of the main pleading, and, in addition,*
- (b) dispatching one signed original and four additional copies of the entire submission to the Secretary of the Tribunal and two copies to counsel for the opposing party [to the attention of Ms. Carolyn Lamm, in the case of the Claimants, and to the attention of Dr. Gabriel Bottini, from Procuración del Tesoro in Buenos Aires, Argentina and Mr. Jonathan I. Blackman, at Cleary, Gottlieb, Steen & Hamilton in New York, in the case of the Respondent].*

The date of filing shall be the date of receipt by the Centre of the electronic version of the pleadings.

It was also agreed that each party will submit a full electronic version (in CD-ROM, DVD, memory stick or any analogous device) of each substantive written submission, no later than two weeks following the deadline for the submission, providing seven copies to the Centre and two copies to counsel for the opposing party.

Unless otherwise provided for in the Arbitration Rules, the decisions of the Tribunal will be communicated to the parties through instructions to the Secretariat.”

- B. Respondent’s letter of 4 October 2012 regarding the submission of the translation of Claimants’ Memorial on Phase 2 dated 1 October 2012, in which Respondent filed the following requests:
- (i) that the term for filing Respondent’s Counter-Memorial start running from the date of receipt of the translation into Spanish of Claimants’ Memorial on Phase 2;
 - (ii) that “*to the end that the equality of the parties be respected,*” any procedural orders and communications as the Arbitral Tribunal may issue in the future be sent to the Parties in both languages simultaneously;
 - (iii) that the time limits provided for by Procedural Order No. 13 start running upon receipt of the Spanish version of Procedural Order No. 13.
- C. Respondent’s letter of 12 October 2012, whereby it stated that (i) it had not received by any means the current Microsoft Access copy of the Database allegedly submitted by Claimants together with the electronic copy of their Memorial, and (ii) it had not received either an electronic copy of the Exhibits or the Legal Authorities submitted together with Claimants’ Memorial on Phase 2.
- D. Claimants’ letter of 15 October 2012, announcing the sending by Claimants of “*a full electronic version, on a memory stick and on DVDs, of their Memorial on Phase 2 pursuant to the Tribunal’s direction in the Minutes of the First Session, which provide that ‘each party will submit a full electronic version [...] of each substantive submission, no later than two weeks following the deadline for the submission [...]’*”. Claimants have however not commented on Respondent’s letter of 4 October 2012.

















CONSIDERING FURTHER

- E. That the ICSID Secretariat received on 1 October 2012 (three consecutive emails received at 11:55, 11:57 and 11:58 p.m.), an electronic copy of “*Claimants’ Memorial on Phase 2*”, dated 1 October 2012 enclosing the following:
- Claimants’ Memorial on Phase 2 **in English;**
 - Expert Reports of Sebastian Edwards, Pablo E. Guidotti, Iain Hardie, and Brent C. Kaczmarek **in English;**
 - Legal Opinions of Rudolf Dolzer, W. Michael Reisman and Christoph Schreuer **in English;**

- Legal Opinions of Alberto B. Bianchi, Hector A. Mairal, Antonio Fiorella and Luca Marafioti, Luigi Fumagalli, Nicola Picardi **in English**;
 - Witness Statements of Giuseppe Abate, Monica Alberti, Fabio Campiglia, Stefano de Grandi, Mario Flagella, Richard Liebars, Paolo Nota, Giorgio Pagliani, Vincenzo Pandolfo, Giuseppe Santi, Francesco Serrani, and Gianluca Varone **in English**;
- F. That the ICSID Secretariat received on 2 October 2012 a hard copy of “*Claimants’ Memorial on Phase 2*”, dated 1 October 2012 including the same documents as listed above (paragraph E) as well as the following additional documents:
- One volume of Legal Authorities (Italian Law) CLA-ITA-230 through CLA-ITA-258 **in English and Italian**;
 - One volume of Legal Authorities (Argentine Law) CLA-ARG-573 through CLA-ARG- 611 **in English and Spanish**;
 - Eight volumes of Legal Authorities CLA-348 through CLA-475, mostly **in English, four in Italian (two translated in relevant parts) and one in French**;
 - Six volumes of Exhibits C-0075A, C-0080, C-0082 and C-1004 through C-1299, **some only in English and many only in Italian**;
 - Two CD-Roms containing annexes to the Legal Opinion of Mr. Luigi Fumagalli and appendices to the Expert Report of Mr. Brent C. Kaczmarek.
- G. That the ICSID Secretariat received on 8 October 2012 (two emails received at 6:14 and 9:41 p.m.), the Spanish translation of Claimants’ submission of 1 October 2012 in electronic format, including the following documents:
- Claimants’ Memorial on Phase 2;
 - Expert Reports of Sebastian Edwards, Pablo E. Guidotti, Iain Hardie, and Brent C. Kaczmarek;
 - Legal Opinions of Rudolf Dolzer, W. Michael Reisman and Christoph Schreuer;
 - Legal Opinions of Alberto B. Bianchi, Hector A. Mairal, Antonio Fiorella and Luca Marafioti, Luigi Fumagalli, Nicola Picardi;
 - Witness Statements of Giuseppe Abate, Monica Alberti, Fabio Campiglia, Stefano de Grandi, Mario Flagella, Richard Liebars, Paolo Nota, Giorgio Pagliani, Vincenzo Pandolfo, Giuseppe Santi, Francesco Serrani, and Gianluca Varone;
- without however including a Spanish translation of the Italian Legal Authorities (CLA-ITA-230 to CLA –ITA-258), the Exhibits (C-74A, C-80, C-28 and C-1004 through C-1299) and Legal Authorities (CLA-348 through CLA 475).
- H. That the ICSID Secretariat received on 9 October 2012 a hard copy of the **Spanish version** of Claimants’ submission including the documents listed above (paragraph G).

I. That the ICSID Secretariat received on 15 October 2012 a letter from Claimants, announcing that Claimants had sent of a full electronic copy of Claimants' submission including:

- the electronic version of the Claimant's Memorial, and of the accompanying witness statements, legal opinions, expert reports, annexes, exhibits and legal authorities;
- One USB drive containing the following folders:

-  C-Exhibits
-  CLA
-  CLA-ARG
-  Claimant Annexes
-  CLA-ITA
-  Expert Reports
-  Legal Opinions
-  Prior Submissions
-  Witness Statements
-  Claimants' Memorial On Phase 2.pdf
-  Claimants' Memorial on the Merits - C Index.pdf
-  Claimants' Memorial on the Merits - CLA Index.pdf
-  Claimants' Memorial on the Merits - CLA-ARG Index.pdf
-  Claimants' Memorial on the Merits - CLA-ITA Index.pdf
-  Memorial de las Demandantes Sobre la Etapa 2.pdf
-  Memorial on Phase 2 - Master Index.pdf

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- Four DVDs labeled *Annex D Dated 1 October 20012 - (Discs 1 to 4)*.
- One additional DVD labeled *Annex E Dated 1 October 20012 - (Disc 1 of 1)*.

CONSIDERING FURTHER

J. That, with regard to Claimants' submission in English, except for some of the Exhibits and Legal Authorities which are in Italian, Claimants' submission is substantially in compliance with the applicable procedural rules.

K. That the main issue concerns the submission of the Database, and that it appears that while Claimants only submitted an electronic version of this Database on 15 October 2012, they had updated the information on the online Database as of 1 October 2012, and this online Database was at all times accessible to Respondent.

- L. That, by contrast, Claimants' submission in Spanish was delivered on 8/9 October 2012 and therefore with a delay of one week (see above section 7 of the Minutes of the First Session: "*all translations will be filed together with the memorials*").
- M. That, with regard to the communications and orders from the Arbitral Tribunal, Respondent's request is new and does not correspond to the practice so far. In addition, (i) it implies a change in practice, (ii) Respondent does not explain why this change has suddenly become necessary, (iii) Respondent itself does not submit its requests and correspondence in both languages simultaneously.
- N. That, notwithstanding the foregoing, the Arbitral Tribunal agrees that Respondent needs to be provided with Spanish translations of the relevant submissions and orders from the Arbitral Tribunal in a timely manner.
- O. That, however, Respondent has provided no reason and the Arbitral Tribunal sees no need to change the current practice regarding daily communications.

CONSEQUENTLY, THE ARBITRAL TRIBUNAL DECIDES AS FOLLOWS:

- 1. The deadline for the filing by Respondent of its Counter-Memorial shall commence as from 8 October 2012, when it received the Spanish translation of Claimants' submission.**
- 2. Communications from the Arbitral Tribunal and conveyed by the ICSID Secretariat shall continue to be issued in either language according to section 7 of the Minutes of the First Session, and shall not require any translation.**
- 3. Procedural orders and decisions from the Arbitral Tribunal shall be issued in English. They shall be translated into Spanish and a Spanish version of these procedural orders and decisions shall be transmitted to the Parties as soon as the translation has been completed. Deadlines set in those procedural orders and decisions shall start to run from receipt by the Parties of the Spanish translation of such procedural orders or decisions, unless otherwise expressly provided for in the procedural order or decision.**
- 4. The Arbitral Award from the Arbitral Tribunal shall be simultaneously issued in English and Spanish language.**
- 5. The deadlines set in Procedural Order No. 13 with regard to the Italian criminal proceedings shall run from the date of receipt by Respondent of the Spanish version of Procedural Order No. 13, i.e. as of 12 October 2012.**
- 6. All other requests are denied.**

[signed]

Pierre Tercier,

President

On behalf of the Arbitral Tribunal