

**IN THE MATTER OF AN ARBITRATION UNDER THE NORTH AMERICAN FREE  
TRADE AGREEMENT**

**-and-**

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON  
INTERNATIONAL TRADE LAW (1976)**

**-between-**

**ODYSSEY MARINE EXPLORATION, INC. (USA)**

**(the “Claimant”)**

**and**

**THE UNITED MEXICAN STATES**

**(the “Respondent”)**

**ICSID Case No. UNCT/20/1**

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**PROCEDURAL ORDER No. 7  
On the Organization of the Hearing**

***Members of the Tribunal***

Mr. Felipe Bulnes Serrano, Presiding Arbitrator  
Dr. Stanimir Alexandrov, Arbitrator  
Prof. Philippe Sands, Arbitrator

***Secretary of the Tribunal***

Ms. Anna Toubiana, ICSID

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20 December 2021

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**I. PROCEDURAL BACKGROUND**

1. On 22 October 2021, the Tribunal invited the parties to inform the Tribunal by 1 November 2021 whether they wished to hold an in-person, hybrid, or virtual hearing.
2. By letter dated 1 November 2021, the Respondent informed the Tribunal of the parties' failure to reach an agreement regarding the hearing modality. The Respondent emphasized its preference for a virtual hearing due to the conditions imposed by the COVID-19 pandemic, as well as travel restrictions to the United States that would preclude the Respondent from physically attending the hearing and that would hence place it at a disadvantaged position. The Respondent instead proposed that the hearing be held virtually.
3. On 2 November 2021, the Claimant consented to a virtual hearing.
4. On 17 November 2021, the Tribunal advised the parties regarding its decision to hold the hearing presently scheduled on 24 – 28 January 2022 in a virtual modality for all participants (the "**Hearing**").
5. Pursuant to Section 21 of Procedural Order No. 1 ("**PO1**"), a pre-hearing organizational meeting between the parties and the President of the Tribunal was held by video conference on 9 December 2021 (the "**Pre-Hearing Conference**"), to discuss any outstanding procedural, administrative, and logistical matters in preparation for the Hearing. Participating were:

President of the Tribunal:

Mr. Felipe Bulnes Serrano, President of the Tribunal

ICSID Secretariat:

Ms. Anna Toubiana, Secretary of the Tribunal

On behalf of the Claimant:

Ms. Rachel Thorn, Cooley LLP

Mr. Jason File, Cooley LLP

Mr. Juan Nascimbene, Cooley LLP

Mr. James Maton, Cooley LLP

Mr. Henry G. Burnett, King & Spalding LLP

Mr. Viren Mascarenhas, King & Spalding LLP

On behalf of the Respondent:

Mr. Orlando Pérez Gárate, *Director General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía*

Mr. Francisco Diego Pacheco Román, *Director de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía*

Mr. Alan Bonfiglio Ríos, *Director de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía*

Mr. Antonio Nava Gómez, *Director de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía*

Mr. Rafael Alejandro Augusto Arteaga Farfán, *Director de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía*

Ms. Laura Mejía Hernández, *Subdirectora de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía*

Ms. Virginia Isabel Pérez del Castillo Pérez, *Subdirectora de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía*

Mr. Stephan E. Becker, Pillsbury Winthrop Shaw Pittman LLP

Mr. Alejandro Barragán, Tereposky & DeRose LLP

6. During the Pre-Hearing Conference, the parties and the President of the Tribunal discussed the draft Procedural Order circulated to the parties on 17 November 2021, and the parties' joint statement of 3 December 2021 advising the Tribunal of any agreements reached on the various items, as well as their respective positions where no agreement was reached.
7. A 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 Tribunal and the parties on 10 December 2021.
8. On 17 December 2021, each party sent their final list of witnesses and experts to be cross-examined at the Hearing.
9. The Tribunal has considered the parties' positions and, in the present Order, sets out the procedural rules that the parties have agreed upon and the Tribunal has determined will govern the conduct of the virtual Hearing.

## **II. ORGANIZATION OF THE HEARING**

### **A. DATE AND FORMAT OF THE HEARING**

10. The Hearing will take on 24 – 29 January 2022 virtually for all participants through Zoom (“**the Hearing Platform**”). The Hearing Platform shall be operated by Sparq (“**Technical Operator**”).

### **B. ORDER OF PROCEEDINGS AND SCHEDULE**

11. In light of the location of the participants and their respective time zones, the Hearing will start at 8:00 am Mexico/Central; 9:00 am Eastern; 11:00 am Chile; 2 pm GMT. It is expected to conclude by 3:00 pm Mexico/Central; 4:00 pm Eastern; 6:00 pm Chile; 9:00 pm GMT. There will be three breaks during the Hearing day, two of 15 minutes and another of 30 minutes.
12. The order of proceedings and structure of the Hearing will be as indicated in the agenda incorporated as **Annex A**.
13. The Tribunal reserves discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.

### **C. TIME ALLOCATION**

14. The Hearing will proceed on the principle that the parties should have equal time to present their case within the time allocation agreed upon for each phase of the Hearing (Opening Statement, Direct and Cross-Examination of Witnesses and Experts).
15. Time used by the parties in oral arguments or in examinations of witnesses and experts shall be attributable to the party making such argument or conducting such examination.
16. Accordingly, considering the number of Hearing days (6 days with no days in reserve), there will be a total of 36 hours excluding breaks. Each party shall have 1.5 working hours for opening statements and a total of 13.5 working hours available to it for examinations of witnesses and experts during the entire Hearing. The Tribunal will provisionally have 1 hour for questions each day.

17. Time attributable to Tribunal questions to counsel or experts, to clarify points being made, shall not interrupt the clock for the party otherwise making a presentation or conducting an examination, but any extended Tribunal questioning lasting longer than 5 minutes will be allocated to reserved Tribunal time.
18. Time used for housekeeping or to resolve technical difficulties shall be counted against the time for housekeeping or against the Tribunal's time, if needed.
19. Each party shall have the following allocated time for each stage of the Hearing:
  - (a) *Opening Statement*. Each party shall be allowed a maximum of 1.5 hours for its Opening Statement.
  - (b) There shall be no Rebuttal Opening Statements.
  - (c) *Witnesses/Expert cross-examinations*:
    - *Direct Examination of Fact Witnesses*. The direct examination of a fact witnesses as set out by Section 20.8 of PO1 shall not exceed 10 minutes.
    - *Direct Presentations by Experts*. The presentation by an expert envisioned in Section 20.9 of PO1 shall not exceed 40 minutes. Alternatively, pursuant to Section 20.8 of PO1, a party may choose to conduct a brief direct examination of the expert that shall not exceed 10 minutes.
  - (d) There shall be no oral closing statements. In lieu of closing statements, the parties will submit post-hearing briefs together with their responses to any questions by the Tribunal.
20. The Secretary of the Tribunal shall keep a chess clock account of time and advise the parties of the total daily time used at the end of each Hearing day.
21. The Tribunal emphasizes that the parties are expected to use their allocated time efficiently and avoid unnecessary slippage (e.g., delays in returning from breaks). In the event of excess

slippage, the Tribunal 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. In principle, witnesses and experts should be available one-half day before and after the time they are scheduled to be examined.

**D. DOCUMENTS FOR USE AT THE HEARING**

**1. Electronic Hearing Bundle**

22. There shall be a single Electronic Hearing Bundle to be prepared jointly by the parties.
23. The parties shall provide, no later than **10 January 2022**, the Electronic Hearing Bundle which shall contain all pleadings, expert reports, exhibits, legal authorities and Tribunal'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. Pleadings**

- A. Claimant
- B. Respondent

**02. Witness Statements including Exhibits thereto**

- A. Claimant
- B. Respondent

**03. Expert Reports including Exhibits thereto**

- A. Claimant
- B. Respondent

**04. Exhibits**

- A. Claimant
- B. Respondent

**05. Legal Authorities**

- A. Claimant
- B. Respondent

**06. Tribunal's Rulings**

24. The Electronic Hearing Bundle shall be uploaded by the parties to a designated sub-folder in the BOX file-sharing 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 file-sharing platform, in a sub-folder using the structure indicated at paragraph 23 *supra*, including a consolidated (non-hyperlinked) index.

25. Prior to the Hearing, the Members of the Tribunal, the Secretary of the Tribunal, and the parties shall download the Electronic Hearing Bundle from the BOX Case Folder onto their own devices to have access to it offline during the Hearing. The court reporters and the interpreters will also be provided a copy of the Electronic Hearing Bundle via the ICSID Secretariat.
26. The parties shall also distribute the Electronic Hearing Bundle in a USB (PC and Mac compatible) to be sent by courier no later than **11 January 2022** directly to: (i) each Member of the Tribunal; and (ii) the Secretary of the Tribunal (to addresses to be communicated by the ICSID Secretariat in due course). The USB shall contain the hyperlinked version of the index.
27. At the conclusion of the Hearing and following the submission of any scheduled post-hearing submissions, the parties shall upload an updated Electronic Hearing Bundle to a designated sub-folder in the BOX filesharing platform. The updated Electronic Hearing Bundle shall contain the hyperlinked version of the index and be updated to include exhibits, authorities and demonstratives introduced during the hearing and any post-hearing submissions. The parties shall also send an USB with the updated Electronic Hearing Bundle directly to: (i) each Member of the Tribunal; and (ii) the Secretary of the Tribunal (to the same addresses communicated in relation to paragraph 26 *supra*).

## **2. Electronic Hearing Bundle for Cross-Examination**

28. During cross-examination, the parties will refer to documents that form part of the record of the case.
29. Prior to the beginning of each cross-examination, the cross-examiner shall provide either cross examination bundles in electronic format or abridged hyperlinked indices to serve as cross-examination bundles to be provided to the witness/expert testifying, the opposing



party, each Member of the Tribunal, the Secretary, the court reporters and the interpreters via the BOX folder created for this case, to be downloaded before the cross-examination. Electronic cross-examination bundles will be provided to the Tribunal and to the other party and the Witness/Expert at a minimum 30 minutes before the relevant cross-examination.

30. The witness and experts are entitled to be shown a full copy of any exhibit or authority on which they will be questioned (*i.e.*, they are not to be restricted to reviewing excerpts of documents shown on a screen).

### **3. Demonstrative Exhibits**

31. The parties may use PowerPoint or other slide presentations for their oral statements, subject to the below rule on demonstrative exhibits.
32. Demonstrative exhibits shall be used in accordance with Sections 18.8 of PO1 (reproduced below), with certain adjustments indicated in paragraph 33 *infra*:

“18.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided that they contain no new evidence. 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 Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at a time to be decided at the pre-hearing organizational meeting.”

33. To account for the virtual component of the virtual Hearing, PO1 Section 18.8 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 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 Tribunal, the Members of the Tribunal, to the court reporter and to the interpreters as necessary no later than 1 hour *prior* to its use, in order to facilitate offline access to the demonstrative by the Hearing Participants. This will enable virtual participants to print the

demonstrative if desired. It is advisable to transmit the demonstrative exhibits to the Members of the Tribunal and the ICSID Secretary with more than 1 hour notice.

34. 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 file-sharing platform, designating each with the corresponding CD-\_\_ or RD-\_\_ number. Demonstrative exhibits need not be translated.

#### **4. Electronic Presentation of Evidence**

35. Each party shall present demonstrative exhibits and evidence to the participants in the Hearing *via* the video platform system.
36. Hearing Participants are advised to have the Electronic Hearing Bundle and any demonstrative exhibit previously distributed in accordance with the paragraphs above downloaded into their own devices and available for access offline.
37. Demonstrative exhibits and clean, unannotated electronic copies of documents on the record may be displayed to all Hearing Participants via the Zoom videoconference platform using the screen-sharing function or with the assistance of the technical support of the Technical Operator at the parties' choosing. Any Hearing Participant shall have the technical ability to display a document to all Hearing Participants via the Hearing Platform, 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.
38. Documents that do not form part of the record may not be presented at the Hearing.

#### **E. WITNESS AND EXPERT EXAMINATION**

39. The rules set out in Procedural Order No. 1 for the examination of witnesses and experts are confirmed. In particular, the examination and cross-examination will proceed in accordance with Section 20.1 of Procedural Order No. 1, which reads as follows:

“20.1 A party may be called upon by the opposing party to produce at the hearing for cross-examination any witness or expert whose written

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testimony has been submitted with the Pleadings. The Tribunal may also direct a witness to appear for examination even if that witness is not called by the opposing party for cross-examination.”

40. Witnesses and experts shall follow the instructions provided in **Annex C**, item J.
41. Re-direct examination shall be permitted, but shall be limited to topics that arose during cross-examination.
42. Re-cross examination may be permitted subject to a reasoned application, which the Tribunal may grant at its discretion.
43. Witnesses shall be sequestered prior to giving testimony but shall be allowed to observe the hearing after testifying. Experts shall not be sequestered and shall be allowed to observe the hearing when not testifying.
44. Witnesses who are party representatives will be examined first and will not be sequestered after their examination has concluded. Only one witness can be designated as a party representative.
45. Fact witnesses produced by the Claimant shall testify first, followed by fact witnesses produced by the Respondent. Experts shall then testify individually in order according to subject-matter categories: Mexican law; environmental issues; and damages. Within each subject-matter category, experts produced by the Claimant shall testify first, followed by experts produced by the Respondent. The party producing each witness and expert shall designate the order in which they will testify within their respective groups, which shall be communicated to the Tribunal, Secretary and opposing party no later than **17 January 2022**.
46. The parties have called for examination the following witnesses and experts:
  - a. The Respondent has called the following witnesses and experts produced by the Claimant:
    - i. Agrifos Partners LLC
    - ii. [REDACTED]

- iii. [REDACTED]
- iv. Claudio Lozano Guerra-Librero
- v. Compass Lexecon
- vi. Craig Bryson
- vii. Héctor Herrera Ordoñez
- viii. Mark D. Gordon
- ix. Vladimir H. Pliego Moreno

b. The Claimant has called the following witnesses and experts produced by the Respondent:

- i. Ernesto Acevedo Fernández
- ii. Rafael Pacchiano Alamán
- iii. Hugo Gabriel Romero Martínez
- iv. Grupo de Expertos en Tortugas Marinas
- v. María Verónica Morales Zárata
- vi. Quadrant Economics
- vii. SOLCARGO
- viii. Taut Solutions Ltd
- ix. Watts, Griffis and McQuat Limited

#### **F. AUDIO AND VIDEO RECORDINGS**

47. The provision of Section 23.1 of PO1 concerning audio recording (reproduced below) applies.

“23.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Members of the Tribunal.”

48. The Secretariat shall record the Hearing, and the audio recording will be shared with the parties and the Tribunal at the conclusion of the Hearing. The audio recording may not be duplicated, shall only be used for the purpose of verifying the contents of the verbatim transcript and may not be used in any setting outside these proceedings.

49. A video recording will also be made of the Hearing but will not be made public or become part of the record of this arbitration. The parties agree that it will be shared with the parties and the Tribunal at the conclusion of the Hearing for transcript verification purposes and may not be used in any setting outside of these proceedings.
50. Except for the court reporters that will make their own audio recording of the Hearing, attendees will not otherwise make any audio, video or screenshot record of the Hearing or any part of it.

#### **G. TRANSCRIPTION**

51. The provisions of PO1, Sections 23.2 and 23.4 concerning transcription (reproduced below) apply, with the adjustments indicated in paragraph 52 *infra*.

“23.2. Verbatim transcript(s) 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 Tribunal, 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 Tribunal on a same-day basis.

23.4. The parties shall agree on any corrections to the transcripts within 30 days of the date of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the parties in the transcripts (‘revised transcripts’). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.”

52. Transcription services will be provided by B&B Reporters and DR-Esteno (the “court reporters”). The court reporters will attend remotely. The court reporters may seek to clarify the record from time to time during the course of the hearing.
53. Real-time court reporting in English and Spanish shall be made available to the Hearing Participants *via* an online link connection to be provided by the English and the Spanish court reporters. Hearing Participants shall connect to the transcript by opening a link in a 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.

54. In accordance with Section 23.4 of PO1, the deadline for corrections to the transcript shall be 30 days following the date of the receipt of the sound recordings and transcripts.

#### **H. INTERPRETATION**

55. ICSID has arranged simultaneous interpretation in English and Spanish.
56. The interpreters will provide the interpretation remotely using the Zoom platform.
57. The following witnesses and experts will be speaking in Spanish:

- a. [REDACTED]
- b. [REDACTED]
- c. Claudio Lozano Guerra-Librero
- d. Ernesto Acevedo Fernández
- e. Frederico Kunz Bolaños
- f. Grupo de Expertos en Tortugas
- g. Héctor Herrera Ordoñez
- h. Hugo Gabriel Romero Martinez
- i. María Verónica Morales Zárate
- j. Rafael Pacchiano Alamán
- k. SOLCARGO
- l. Vladimir H. Pliego Moreno

58. The following witnesses and experts will be speaking in English:

- a. Agrifos Partners LLC
- b. Compass Lexecon
- c. Craig Bryson
- d. Mark D. Gordon

- e. Taut Solutions Ltd
- f. Watts, Griffis and McQuat Limited
- g. Quadrant Economics

59. The Participants should speak slowly, one person at a time, and should pause briefly when handing the floor to another Participant.
60. Each Participant should, insofar as possible, circulate any speaking notes and PowerPoint slides to the interpreters prior to the start of each intervention. These notes should be emailed directly to the interpreters (see **Annex B** with their email addresses) and are to be treated as confidential information.

#### **I. POST-HEARING SUBMISSIONS**

61. The provisions of PO1, Section 24 (reproduced below) apply.

“24.1. At the conclusion of the hearing, the Tribunal shall decide after consultation with the parties whether the parties will file post-hearing submissions, as well as when and in what form the parties shall file their submissions on costs.”

62. In light of the parties’ agreement to forego oral closing arguments at the Hearing, the Tribunal hereby amends PO1, Section 24, and orders that the parties shall file simultaneous Post-Hearing Submissions. The Tribunal shall give further instructions concerning the Post-Hearing Submissions after the conclusion of the Hearing.
63. Should the Tribunal have remaining questions to pose to the parties after conclusion of the Hearing, it shall submit them to the parties in writing within 15 days following conclusion of the Hearing. The parties shall respond in writing in their simultaneous Post-Hearing Submissions due 60 days from receipt of the Tribunal’s questions or revised transcripts, whichever is later.

#### **J. PARTICIPANTS**

64. Each party shall provide its respective List of Hearing Participants (“**List of Participants**”) by **10 January 2022**, using the format provided in Annex B. Each party shall designate those

participants who will have an active speaking role (“**Active Participants**”), and those who will be passive attendees (“**Passive Participants**”) (all together the “**Hearing Participants**”).

65. Non-Disputing NAFTA Parties may attend oral hearings, and are entitled to make oral submissions during the hearing if they ask to do so. The Tribunal shall notify the Non-Disputing Parties the date and time for making the oral submissions.

#### **K. VIRTUAL HEARING ARRANGEMENTS**

66. The Hearing Platform shall be hosted and operated by Sparq.
67. The details to join the Hearing Platform will be shared by the ICSID Secretariat in advance of the Hearing. Access to the Hearing Platform will be available via the same link throughout the entire Hearing.
68. In addition to the rules set out above, the procedures specified in **Annex C** shall apply as needed.

#### **L. GENERAL PROVISIONS**

##### **1. Confidentiality**

69. 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.

##### **2. Data Privacy**

70. 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



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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 Tribunal and other participants providing services for the Hearing.

For and on behalf of the Tribunal,

[Signed]

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Mr. Felipe Bulnes Serrano  
President of the Tribunal

**ANNEX A**

**HEARING AGENDA**  
**TO BE COMPLETED BY THE PARTIES BY 10 JANUARY 2022**

**Day 1: 24 January 2022**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
		<b>Break</b>
		<b>Break</b>
		<b>Break</b>
	1h	Tribunal's Questions / Housekeeping
		<b>End</b>

**Day 2: 25 January 2022**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
		<b>Break</b>
		<b>Break</b>
		<b>Break</b>
	1h	Tribunal's Questions / Housekeeping
		<b>End</b>

**Day 3: 26 January 2022**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	

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		<b>Break</b>
		<b>Break</b>
		<b>Break</b>
	1h	Tribunal's Questions / Housekeeping
		<b>End</b>

**Day 4: 27 January 2022**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
		<b>Break</b>
		<b>Break</b>
		<b>Break</b>
	1h	Tribunal's Questions
		<b>End</b>

**Day 5: 28 January 2022**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
		<b>Break</b>
		<b>Break</b>
		<b>Break</b>
	1h	Tribunal's Questions / Housekeeping
		<b>End</b>

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**Day 6: 29 January 2022**

<i>Hour</i>	<i>Duration</i>	<b>PROCEDURAL STEP</b>
<b>00:00 AM/PM</b>	<b>(# hours/min.)</b>	
		<b>Break</b>
		<b>Break</b>
		<b>Break</b>
	1h	Tribunal's Questions / Housekeeping
		<b>End</b>

**ANNEX B**

**LIST OF PARTICIPANTS<sup>1</sup>**

<b>TRIBUNAL</b>					
<b>Room</b>	<b>Name</b>	<b>Role</b>	<b>Affiliation to Case</b>	<b>Location of Connection (if remote)</b>	<b>Personal Contact</b>
T	[T] – Felipe Bulnes Serrano	A	President	Santiago	Email : <a href="mailto:fbulnes@bub.cl">fbulnes@bub.cl</a>
T	[T] – Stanimir Alexandrov	A	Co-arbitrator	Washington D.C.	Email: <a href="mailto:salexandrov@alexandrovlaw.com">salexandrov@alexandrovlaw.com</a>
T	[T] – Philippe Sands	A	Co-arbitrator	London	Email: <a href="mailto:philippinesands@matrixlaw.co.uk">philippinesands@matrixlaw.co.uk</a>

<b>SECRETARY OF THE TRIBUNAL</b>					
<b>Room</b>	<b>Name</b>	<b>Role</b>	<b>Affiliation to Case</b>	<b>Location of Connection (if remote)</b>	<b>Personal Contact</b>
T	[T] – Anna Toubiana	A	Secretary of the Tribunal	Washington D.C.	Email : <a href="mailto:atoubiana@worldbank.org">atoubiana@worldbank.org</a> Phone : +1(202) 473-4934

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<sup>1</sup> Use “A” (Active Participants) / “P” (Passive Participants). Only participants marked as “A” who are participating virtually will activate their cameras during the Hearing.

<b>CLAIMANT</b>					
<b>Room<sup>2</sup></b>	<b>Name</b>	<b>Role</b>	<b>Affiliation to Case</b>	<b>Location of Connection</b>	<b>Personal Contact</b>
	<b><i>Counsel:</i></b>				
C	[C] – Name Last name	A		Room [Firm] [C] [City]	Email: Phone:
C	[C] –	A		Room [Firm] [C] [City]	Email: Phone:
C	[C] –	A			Email: Phone:
	<b><i>Party Representative:</i></b>				
C	[C] – Name Last name	P		Home [C] []	
	<b><i>Witnesses:</i></b>				
W	[W] – Name Last name	A			
	<b><i>Experts:</i></b>				
C	E	[E] – Name Last name	A		

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<sup>2</sup> Witnesses [W] and Experts [E] called to testify will be assigned to the waiting room W/E during their cross-examination. Experts [E] will be assigned to Waiting Room [C] if they are present during any other time.

<b>RESPONDENT</b>					
<b>Room<sup>3</sup></b>	<b>Name</b>	<b>Role</b>	<b>Affiliation to Case</b>	<b>Location of Connection</b>	
	<b><i>Counsel:</i></b>				
R	[R] – Name Last name	A		Room [Firm] # 1 [R] [Washington, DC]	Email: Phone:
R	[R] – Name Last name	A		Room # 1 [R] [Washington, DC]	
	<b><i>Party Representatives:</i></b>				
R	[R] – Name Last name	P		Home [R] []	
R	[R] – Name Last name	P		Home [R] []	
	<b><i>Witnesses:</i></b>				
W	[W] – Name Last name	A			
	<b><i>Experts:</i></b>				
R	[E] – Name Last name	A			

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<sup>3</sup> Witnesses [W] and Experts [E] called to testify will be assigned to Waiting Room W/E during their cross-examination. Experts [E] will be assigned to Waiting Room [R] if they are present during any other time.

<b>COURT REPORTERS</b>				
Room	Name and Contact	Role	Affiliation	Location of Connection
N/A	[CR] – David Kasdan <a href="mailto:david.kasdan@wwreporting.com">david.kasdan@wwreporting.com</a>	P	Court Reporter	[City]
N/A	[CR] – Dante Rinaldi <a href="mailto:dante_rinaldi@hotmail.com">dante_rinaldi@hotmail.com</a>	P	Court Reporter	[City]

<b>INTERPRETERS</b>				
Room	Name and Contact	Role	Affiliation to Case	Location of Connection
N/A	[INT] – Judith Letendre <a href="mailto:judithletendre@gmail.com">judithletendre@gmail.com</a>	P	Interpreter	[City]
N/A	[INT] – Sonia Berah <a href="mailto:soniaberah@gmail.com">soniaberah@gmail.com</a>	P	Interpreter	[City]
N/A	[INT] – Daniel Giglio <a href="mailto:danielgiglio@earthlink.net">danielgiglio@earthlink.net</a>	P	Interpreter	[City]

<b>TECHNICAL SUPPORT STAFF</b>				
Room	Name	Role	Affiliation to Case	Location of Connection
N/A	[Sparq] – Mike Young <a href="mailto:Mike.Young@sparq.live">Mike.Young@sparq.live</a>	P	Technical Operator	London
N/A	[ICSID] – Anastasia Tsimberlidis <a href="mailto:atsimberlidis@worldbank.org">atsimberlidis@worldbank.org</a>	P	Paralegal, ICSID	Washington D.C.
N/A	[IT] – Name Last Name	P	[IT from Counsel]	Room [Firm] # 1 [C] [City]
N/A	[IT] – Name Last Name	P	[IT from Counsel]	Room [Firm] # 1 [R] [City]



**ANNEX C**

**PROTOCOL ON VIRTUAL HEARING MATTERS**

**a. Testing**

1. The Secretariat will conduct technical tests with the Tribunal and each party in advance of the Hearing, to test connectivity to the Hearing Platform and to the transcription service. The Secretariat recommends that as many Hearing Participants as possible connect for each test. The date of each test will be communicated in due course. Tests may also include the court reporters and the interpreters.
2. Each Hearing Participant should join the tests with the same device(s) and internet connection and from the same physical location that he/she intends to use for the Hearing.

**b. Participants**

3. The List of Participants shall designate those participants that will have an active speaking role (Active Participants), and those who will be passive attendees (Passive Participants). The parties should also indicate if several Hearing Participants will be connecting to the Hearing from the same location (in such circumstances, Hearing Participants shall continue to follow applicable social distancing guidelines).
4. For ease of identification, the Hearing Participants shall join the videoconference using the naming convention indicated in the format in Annex B, namely, first and last name preceded by [T] (for Members of the Tribunal), [C] (for Hearing Participants for the Claimant), [R] (for Hearing Participants for the Respondent), [E] (for experts), or [W] (for witnesses). Should there be Hearing Participants joining from a common conference room, the conference room connection may be identified as “[C or R] Conference Room #” as appropriate.
5. Hearing Participants will join the videoconference through a “waiting room”.
6. Access to the Hearing Platform shall be restricted to those included in the List of Participants. Should any non-listed Hearing Participant attempt to connect, the Technical Operator will alert the Secretary of the Tribunal, and, if necessary, the Tribunal will address the matter with

the parties. All Hearing Participants bear an ongoing duty to warn the Technical Operator and the Secretary of the Tribunal of the presence of any other person on the Hearing Platform.

7. Hearing Participants shall join the videoconference 30 minutes in advance of the start on each day to facilitate the identification of Hearing Participants and to address any technical contingencies.

**c. Connectivity**

8. The parties shall ensure that each of their representatives, witnesses and experts who will connect to the Hearing Platform use a stable internet connection offering sufficient bandwidth and use a camera and microphone/headset of adequate quality.
9. If available, Hearing Participants are advised to use a wired Ethernet connection instead of Wi-Fi. Hearing 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. For best connectivity, it is recommended that Hearing Participants (i) avoid streaming during the Hearing; and (ii) close all unnecessary browser tabs/windows. Download speed should ideally be higher than 15 Mbps (for testing, go to [www.speedtest.net](http://www.speedtest.net)). If a Hearing Participant experiences connectivity issues, Zoom will automatically prioritize the audio feed and may disconnect the video feed for a given Hearing Participant.
10. The Hearing Platform will also offer a dial-in telephone audio connection as a backup option should a Hearing Participant experience a temporary technical difficulty with a computer online connection. The parties are advised that the dial-in back-up telephone connection provides access to the “floor” audio channel only, not to the interpretation channels. Certain key Hearing Participants may wish to dial-in by phone in addition to connecting through their computer, so as to be able to switch seamlessly to telephone audio in case they should happen to be disconnected at any point (in such circumstances, it is important that no more than one device is unmuted at any given time, to avoid audio feedback).

11. If a Hearing Participant experiences any technical issue during the Hearing, they may (i) use the chat function in Zoom to communicate with the Technical Operator; or (ii) send an email to the Operator with copy to the ICSID Secretariat. All other remote hearing support issues should be addressed to the Tribunal Secretary and the paralegal.

**d. Transcripts**

12. Instructions to access the live transcript will be provided by the Secretary of the Tribunal.

**e. Interpretation**

13. The Hearing Participants who will be speaking should use headsets (or external high-quality microphone), as this will help to ensure a good quality of the audio for the interpreters and for all participants more generally. On the Zoom platform, there will be a Spanish and English channel in addition to the Floor (which will be the “Off” button). The participants are asked to be mindful of the interpreters when speaking, just as in an in-person hearing. Participants on one channel can only be heard by other participants on that channel. If participants wish to address the Members of the Tribunal in English, they need to select the “English” channel. If they wish to address the Members of the Tribunal in Spanish with interpretation, they may do so from the “Spanish” channel.

**f. Equipment and Set Up**

14. For optimum sound quality, especially for the audio recording and transcription, the Secretariat highly recommends that the main speakers who are connecting virtually use an external microphone connection such as a headset through the USB or “mic” jack of the computer or laptop that they will be using for the videoconference. If an external headset is not available, Active Participants are asked to speak close to the microphone.
15. 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.

**g. Videoconference Etiquette**

16. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, virtual participants should remain connected throughout the Hearing day.
17. Upon joining the videoconference on the first day of the Hearing, the Hearing Participants using their computer should turn both their audio and video on. The President will invite each party to introduce its team. After each party has introduced all of its relevant Hearing Participants, the Hearing Participants who are not expected to speak should turn off their video feed and mute their microphones.
18. Other than the first part of the first day of the Hearing, the parties are advised to keep the number of video connections (i.e., connections transmitting video of the Hearing Participant to the videoconference) to a minimum, and to Active Participants only. Passive Participants should join the meeting through their computer but should keep their video feed off.
19. Hearing Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The Technical Operator shall have the ability to mute Hearing Participants if needed to avoid background noise, under the Tribunal’s control. Speakers should keep their phones and other devices on silent mode.
20. Hearing Participants are advised to join the Hearing from a location without background noise and with adequate lighting. Hearing Participants transmitting video feeds shall avoid sitting with a window or source of light behind them.
21. The above provisions on etiquette may be adjusted or supplemented by the Tribunal, in consultation with the parties, in the course of the Hearing.

**h. Break-Out Rooms**

22. If applicable and requested, break-out rooms separate from the Hearing Room, to be used securely by each party and the Tribunal during breaks, will be arranged on the Hearing Platform.

23. During the designated Hearing breaks, the parties will be assigned to breakout rooms within the Hearing Platform to enable all the Hearing Participants to promptly reconvene following breaks.
24. The List of Participants shall indicate the break-out room to which Hearing Participants shall be assigned, with [C] for the Claimant's break-out room, [R] for the Respondent's break-out room. Should there be a break in the course of a given witness or expert examination, the testifying witness/expert will be isolated in a separate break-out room identified as [W/E].
25. 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 Operator.

**i. Technical Difficulties**

26. Each party shall designate, in its List of Participants, one of its representatives to act as video-conference emergency contact person ("**VC Emergency Contact Person**") for purposes of addressing any technical incidents that might arise during the video-conference. The VC Emergency Contact Person shall be responsible for advising the Tribunal and the Tribunal Secretary if an essential Hearing Participant on their side is disconnected or is otherwise unable to participate. In all other cases, the VC Emergency Contact Person shall notify and address technical issues with the Tribunal Secretary and the Technical Operator.
27. The Tribunal may temporarily or permanently suspend the Hearing if it deems the functioning of the Hearing Platform to be inadequate or likely to prejudice the due process rights of either of the parties or the integrity of the proceeding. The parties are asked to bear in mind that full recordings and transcripts will be available to them, mitigating any potential prejudice arising from the failure of any given Hearing Participant to be able to follow the entire Hearing live on the Hearing Platform.

**j. Witnesses and Experts**

28. The following rules shall apply to cross-examination of fact witnesses and experts:

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- a. Each witness and expert shall affirm at the start of the examination that they will not receive or provide communications of any sort during the course of their examination.
- b. Each party shall be responsible for ensuring that Hearing Participants in the examination connect to the Hearing Platform through a stable internet connection, offering sufficient bandwidth, and use a camera, microphone, and speaker of good quality. All Active Participants are required to use good quality microphones and cameras, as tested by the ICSID Secretariat and the Technical Operator before the start of the examination.
- c. Each party shall instruct its witness/expert to testify from a quiet room, to the extent possible with a white or plain-colored background, avoiding light sources (such as windows) behind them. The witnesses shall not use a virtual background, filter, or in any way prevent or limit the recording of them or the remote venue from which they are testifying.
- d. To the extent possible, the camera should be positioned at face level, relatively close to the witness/expert, who shall speak directly to the camera while testifying and avoid making quick movements.
- e. The witness/expert shall use a computer set-up on which no programs other than the Hearing Platform and the real-time transcript are open and running. Except for an unannotated copy of their witness statement(s)/expert report(s) and the documents which will be shown on the screen during the examination, the witness/expert shall not be aided by any other documents, notes or otherwise, unless permitted by the Tribunal upon the request from a party.
- f. Witnesses/Experts are to be alone in the room from where they participate, with the exception of one technician that may be present in the same room. Each witness and expert shall affirm at the start of the examination that they are the only person present in the room and will not receive or make communications of any sort during

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the course of their examination. The venue/room shall be visible at all times, either through the use of a 360-degree camera or through the use of a second laptop.

- g. The witness or expert to be examined will be connected to the virtual waiting room of the Hearing Platform 30 minutes prior to their examination to ensure sufficient time for them to be added to the virtual Hearing Room. During the breaks, the witness or expert will be placed in a virtual waiting room.
  - h. All communications with the witness or expert during their examination or during breaks in their examination are prohibited.
29. Witnesses/Experts are encouraged to have two screens to facilitate simultaneous viewing of the video connection and documents.