

**ICSID Case No. ARB/07/5**

**ABACLAT AND OTHERS  
(CLAIMANTS)**

and

**THE ARGENTINE REPUBLIC  
(RESPONDENT)**

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**PROCEDURAL ORDER No. 20**

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**24 APRIL 2013**

## **IN VIEW OF**

1. The Expert's 'Request to Approve Additional Resources' dated 10 April 2013 (hereinafter the "Expert's Request"), in which he submitted the following requests:
  - *Permission for the current members of the Review Team to work more than five days per week. Several members have already committed to six days of work per week, and the undersigned is attempting to obtain additional commitments by COB tomorrow;*
  - *Approval for recruitment of five additional reviewers (and one in reserve). The undersigned is in the process of identifying appropriate candidates and hopes to submit their names together with their pertinent qualifications and experience by COB tomorrow;*
  - *Extension of the time for the submission of the Expert's Draft Report on the Verification of Claimants' Database. Without additional resources, the extension of the current deadline of 30 April 2013 until 31 May 2013 will have to be sought. Assuming five additional reviewers can be identified and approved, and their login information provided, by next week, an extension until 21 May 2013 will be sufficient."*
2. The list of five additional reviewers (and their CVs) provided by the Expert on 15 April 2013 (hereinafter "List of Additional Reviewers") and including :
  - Ms. Adriana Galad Zobrist
  - Mr. Heinrich Meister
  - Mr. Lennart Sitter
  - Ms. Johana Turnerova
  - Ms. Katja Marucha Vuon
  - Ms. Stephania Zourdos

## **CONSIDERING**

3. Claimants' letter of 15 April 2013, in which Claimants "*accordingly consent[ed] to the further expansion of Dr. Wühler's review team, and to the team working more than five days per week*", and in which Claimants "*urge[d] Dr. Wühler to expand his team and review schedule as necessary to ensure timely completion*".
4. Respondent's letter of 15 April 2013, in which Respondent stressed that Dr. Wühler's communication "*does not but confirm the unmanageability of Claimants' Database and Claimants' claim, as alleged and shown by the Argentine Republic ever since the commencement of this proceeding*", without however objecting to any specific part of the Expert's Request although pointing out that "*to date, [the Argentine Republic] has not received the identification of the additional reviewers to be recruited and, therefore, it reserves its views on the matter*".

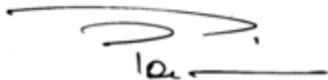
5. The Arbitral Tribunal's message of 17 April 2013 conveyed to the Parties by the ICSID and forwarding the Expert's suggested List of Additional Reviewers. In this message, the Arbitral Tribunal invited the Parties to submit any further comments they may have on the Expert's Request by 19 April 2013.
6. Claimants' letter of 19 April 2013, in which Claimants provided the access information for the five additional reviewers and "*urge[d] that this information be communicated to Dr. Wühler immediately upon the Tribunal's confirmation of the review team's expansion*".
7. Respondent's letter of 19 April 2013, in which, with regard to the Expert's Request, Respondent simply "*maintain[ed] the objections raised on 6 February 2013*".

### **CONSIDERING FURTHER**

8. That, in its letter of 6 February 2013, with regard to the Database Verification, Respondent mainly referred to its previous correspondence stating that "*the team proposed by Dr. Wühler on 25 January 2013 does not modify at all Argentina's objections to the designation of Dr. Wühler and his proposals*<sup>[reference omitted]</sup> *since it does not replace –nor it could, the decision that this Tribunal must make of its jurisdiction *ratione personae*, *ratione materiae* and *ratione voluntatis* on each of the claims and each of the claimants, and the merits of each individual claim*".
9. That the Arbitral Tribunal has already decided on these objections in its Procedural Order No. 17 dated 8 February 2013.
10. That Respondent has not brought forward any additional or new objection specific to the Expert's Request.
11. That Claimants have expressed their agreement with the Expert's Request.
12. That the Arbitral Tribunal is conscious of the established timetable.
13. That Dr. Wühler has convincingly explained the reasons for the Expert's Request, in particular caused by access interruptions and delays to the Database.

**CONSEQUENTLY THE ARBITRAL TRIBUNAL DECIDES AS FOLLOWS:**

1. The Expert's Request is granted, in particular:
  - Permission is granted to the current members of the Review Team to work more than five days a week.
  - Recruitment of the additional reviewers mentioned in para. 2 above is granted.
  - The deadline for rendering of the Draft Report on the verification of the Database is extended to 31 May 2013, whilst the Expert is invited to make every effort to provide this report before such deadline.
  
2. The access information mentioned in Claimants' letter of 19 April 2013 will be communicated to the Expert immediately upon receipt of this Procedural Order.



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*Pierre Tercier,*

*President*

*On behalf of the majority of the Arbitral Tribunal.*

*A Statement of Dissent by Dr. Santiago Torres Bernárdez is attached.*

## Statement of Dissent of Dr. Santiago Torres Bernárdez

1. As explained in my Dissenting Opinion to Procedural Order N° 15, I objected that Order for reasons of principle based upon the relevant provisions of the ICSID Convention and Rules as well as for my lack of confidence in the single Expert chosen by the majority of the Arbitral Tribunal in the light the verification tasks to be performed by him. For similar grounds, I appended a Statement of Dissent to Procedural Order N° 17 because of my disagreement with the confirmation of Dr. Wühler (with or without a team) as Expert of the Tribunal, the object and purpose of the Expert's mission, its scope, mandate and procedures and the time allocated to each individual verification, as well as with the usefulness of a verification of the Claimants' Database out of context or in isolation from the legal and factual surrounding circumstances.

2. Today, I make the present Statement of Dissent concerning Procedural Order N° 20 because in addition to the reasons and grounds above, which remain, recent developments relating to the Database Verification undertaking are revealing, increasingly, the inefficiency of the Verification Scheme as originally conceived by the majority of the Arbitral Tribunal (with evermore increases in staff and costs), as well as shortcomings in the Database itself which hampering its manageability and, eventual, reliability, with consequential detrimental effects for the regular unfolding of the arbitral proceeding and also, according to several communications from the Respondent, for the exercise by the latter of its right of defense.

3. It is, therefore, my considered opinion that instead of granting the Expert's Requests, the Tribunal should reconsider the usefulness of the present Database Verification undertaking and study other alternative means for the necessary verification of the individual Claimants' identities and titles, if any, particularly when the Database seems to be continuously modified and the Claimants have manifested their intention to continue to do so.

Signed: Santiago Torres Bernárdez