

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

**ABACLAT AND OTHERS  
(CLAIMANTS)**

and

**THE ARGENTINE REPUBLIC  
(RESPONDENT)**

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**PROCEDURAL ORDER NO. 23**

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**7 FEBRUARY 2014**

### **IN VIEW OF:**

1. The schedule of the proceedings as determined by Procedural Order No. 12 of 7 July 2012, and as amended by Procedural Order No. 15 of 20 November 2012, Procedural Order No. 17 of 8 February 2013, the Tribunal's directions of 22 July 2013, the Tribunal's directions of 26 September 2013, the Tribunal's directions of 21 October 2013, and the Tribunal's directions of 4 November 2013.
2. The period of time for the filing of Respondent's Rejoinder on Claimants' Reply Memorial on Phase 2, being 75 days after receipt of the Spanish translation of Claimants' Reply on Respondent's Memorial on Phase 2 on 2 December 2013), i.e., 15 February 2014.
3. Respondent's "Proposal for the disqualification of President Pierre Tercier and arbitrator Albert Jan van den Berg" of 19 December 2013 (the "Challenge Request").
4. The suspension of the proceedings pursuant to Rule 9(6) of the ICSID Arbitration Rules ("The proceeding shall be suspended until a decision has been taken on the proposal") as of 19 December 2013.
5. The provisions of Rule 9(5) of the ICSID Arbitration Rules ("Whenever the Chairman has to decide on a proposal to disqualify an arbitrator, he shall use his best efforts to take that decision within 30 days after he has received the proposal").
6. The decision of the Chairman of the Administrative Council on the Challenge Request dated 4 February 2014, rejecting the Challenge Request, having as consequence the end of the suspension of the proceedings.
7. The suspension of the proceedings having lasted 47 days.
8. Respondent's letter of 5 February 2014 and Claimants' letter of 6 February 2014.

### **CONSIDERING**

9. That a suspension of the proceedings due to a challenge of one or more arbitrators does not in and of itself have a consequence that the proceedings are adjusted by the number of days of the suspension.
10. That, however, under the present circumstances, the schedule of the proceedings may have to be adjusted in light of the suspension of the proceedings referred to in Recital 4 above.
11. That, under the present circumstances, the number of days of the suspension can be taken into account when determining the adjustment of the schedule.

### **CONSIDERING FURTHER**

12. That Respondent has to file its Rejoinder on Claimants' Reply Memorial on Phase 2 within 75 days of the receipt of the Spanish translation of Claimants' Reply on Respondent's Memorial in Phase 2, to which, having regard to the foregoing, are added

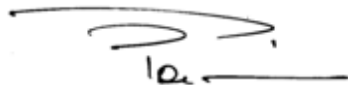
47 days on account of the suspension of the proceedings, the adjusted filing date being **31 March 2014**.

13. That the adjustment of the schedule due to the suspension of the proceedings does not affect the hearing date set for 16-27 June 2014.

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

**1. The schedule of the proceedings is amended as follows:**

2C	19 November 2013 (75 days)	Claimants	Reply on Respondent's Memorial on Phase 2 (CL ReplyMP2)	PO No. 12, para & PO No. 15, paras -43-44
	<b>31 March 2014</b>  (75 days as of receipt of Spanish CL ReplyMP2 plus 47 days of suspension)	Respondent	Rejoinder on Claimants' Reply Memorial on Phase 2 (RSP RejMP2)	PO No. 12, para 6 & PO No. 15, paras 43-44
	+ 4 weeks  As of receipt of English RSP REjMP2  (TBC)	Claimants	Rejoinder Memorial on Jurisdiction regarding new arguments or documents, if any	PO No. 12, para 6 & PO No. 15, para 45
	16-27 June 2014	ALL	Hearing on Phase 2 (Hearing P2)	PO No. 12, para 8 & PO No. 15, para 46, and Directions of 21 October 2013
	TBD	Claimants & Respondent	Post-Hearing Briefs	PO No. 12, para 9
	TBD	Tribunal	Decision on Phase 2	



*Pierre Tercier,*

*President*

*On behalf of the Arbitral Tribunal*

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

## **Statement of Dissent by Dr. Santiago Torres Bernárdez**

1. I dissent from the majority decisions embodied in Procedural Order N° 23 concerning the deadline for submission of the Rejoinder by the Respondent, the hearing dates and the possibility given to the Claimants to file a Rejoinder Memorial on Jurisdiction by motifs already developed in detail in my Statements attached to the President's letters to the Parties of 28 November 2013, 21 October 2013 and 26 September 2013, respectively.

2. With respect to the filing by the Respondent of the Rejoinder, Procedural Order N° 23 extends the former deadline (15 February 2014) until 31 March 2014, namely by 47 days corresponding to the number of days during which the proceedings has been suspended (19 December 2013 to 4 February 2014). It follows that now the number of days for the Respondent becoming acquainted with the contents of the Claimants' Reply is of 122 days (instead of 75 as before). But, it remains that the Claimants became acquainted with the contents of the Respondent's Counter Memorial about 314 days before filing the Reply Memorial. This difference between the said 314 days and 122 days continue to constitute, in my opinion, a gross and unjustified deviation from the commands of the Parties' equality procedural rule in detriment of the Respondent Party. Procedural Order N° 23 does not correct therefore such a deviation.

3. Furthermore, Procedural Order N° 23 does not make any consequential adjustment in the hearing dates which remain as before the suspension of the proceedings. This means, as explained in my statement attached to the President's letter of 21 October 2013, that because of the circumstances described in that statement such hearing dates remain unfriendly to the *égalité d'armes* principle which should preside the unfolding of the hearing, and in detriment also of the same Party. It is my considered opinion that in international arbitral proceedings neither party should obtain some initial advantage over the other where that is due to factual verifiable particular circumstances of the case.

7 February 2014

Signed: Santiago Torres Bernárdez