ICSID Case No. ARB/07/5

ABACLAT AND OTHERS
(CLAIMANTS)

and

THE ARGENTINE REPUBLIC
(RESPONDENT)

PROCEDURAL ORDER NO. 15

---

20 NOVEMBER 2012

CONSIDERING

1. The Arbitral Tribunal refers to Procedural Order No. 12, dated 7 July 2012, in which the Arbitral Tribunal decided to appoint one or more expert(s) in order to verify Claimant's Database (this process being referred to as the "Database Verification").

   In particular, Paragraph 4 of Procedural Order No. 12 reads as follows:

   > *Phase 2B will concern a verification of Claimants' database against the requirements set forth in § 501(iii) of the Decision by one or more experts appointed by the Tribunal after consultation of the Parties ("Database Verification"). The verification process will be supervised by the Tribunal. The Parties will be afforded adequate opportunity to participate in the verification process, and, to this end, may retain their own experts. Phase 2B is to be completed by a report of the expert(s) which will be issued upon the filing of Respondent's Counter-Memorial on Phase 2 ("Database Verification Report") and submitted to the Parties.*

2. The Arbitral Tribunal further refers to the correspondence between the Parties and the Arbitral Tribunal concerning the draft of this Procedural Order (formerly numbered No. 13).

3. The present Procedural Order aims to move forward with the appointment of an expert and to set out the scope of his mission with regard to the Database Verification, as well as basic rules of conduct to be complied with by the expert and the Parties.

A. The Parties' Comments on the draft of this Procedural Order

4. On 7 August 2012, the Arbitral Tribunal circulated the draft of this Procedural Order for comments to the Parties. In the draft Procedural Order, the majority of the Arbitral Tribunal suggested Dr. Norbert Wühler as candidate to be appointed by the Arbitral Tribunal as sole expert. The draft Procedural Order was accompanied by the curriculum vitae of Dr. Wühler and a "Statement of Dissent" by Dr. Torres Bernárdez in which Dr. Torres Bernárdez "*propos[ed] that Professor José Carlos Fernández Rozas be appointed together with Dr. Wühler"* for the reasons mentioned in Dr. Torres Bernárdez' "Statement of Dissent".

5. On 30 August 2012, the Arbitral Tribunal provided the Parties, amongst others, with an updated curriculum vitae of Dr. Wühler and his statement of independence and a cover letter, as well as the curriculum vitae of Prof. José Carlos Fernández Rozas.

6. In their letter of 6 September 2012, Claimants submitted that they have no objection to Dr. Wühler's qualifications to act as the Database Verification expert, subject to the following comments and reservations:

   (i) With regard to his qualification, Claimants consider that Dr. Wühler is suitable. Claimants in particular disagree with the "Statement of Dissent" expressed towards Dr. Wühler's independence and impartiality. Claimants also stress that they do not consider it appropriate to appoint additional experts, mainly due to risks of inefficiency and cost considerations.

(ii) With regard to the costs, Claimants request that Dr. Wühler submit an overall work plan together with a cost estimate, including all of his assistants. Claimants request to have an opportunity to review and comment on this estimate, including the scope of work, before the work begins, in view of Respondent's failure to pay the advance on cost and the likelihood that Claimants would have to bear the entire costs of the verification procedure.

(iii) With regard to the scope of the verification of the requirements set out in para 501(iii) of the Decision on Jurisdiction and Admissibility, Claimants are concerned that the draft Procedural Order does not sufficiently elaborate on what exactly the expert would be testing (e.g. sampling or other techniques), and on what basis he would draw conclusions as to whether the evidence satisfies the requirements set out in para 501(iii) of the Decision on Jurisdiction and Admissibility. Claimants stress that the expert's assessment cannot replace the Arbitral Tribunal's own judgment, and there is thus a need to adapt the draft Procedural Order in this regard.

7. In its letter of 6 September 2012, Respondent objected to the appointment of Dr. Wühler based on the following main arguments:

(i) Dr. Wühler offers no guarantee of independence and impartiality because of his "*long dat*[e] *friendship relationship*" with Professor Karl-Heinz Böckstiegel, who is the arbitrator appointed by claimants in another ICSID case against Argentina relating to "*purported holders of Argentine interests*". According to Respondent, the expert should not have any personal relationship with any arbitrators involved in any case where Argentina is a party. In this regard, it was unfortunate that the Arbitral Tribunal rejected the option of appointing a second expert to "*act as control*".

(ii) Some of the tasks assigned to the expert under items 8(i)-8(ii) must be determined by the Arbitral Tribunal itself and cannot be delegated to the expert.

(iii) Appointing Dr. Wühler would imply to transform the proceedings in something different, i.e. in something similar to the procedure applied by the UN Commission on Compensation (UNCC) although such procedure has nothing to do with ICSID arbitration.

(iv) Dr. Wühler lacks the technical knowledge to conduct tasks mentioned in items 8(iii), 8(iv) and 8(v) insofar as he is not an IT system expert.

(v) Dr. Wühler lacks the necessary Italian language skills.

8. In their letter of 18 September 2012, Claimants confirmed that they have no objection to Dr. Wühler's qualifications to act as the Database verification expert, subject to the scope of work and cost considerations set forth in their letter of 6 September 2012. With regard to Respondent's objections, Claimants submit that Respondent's objections should not be permitted to obstruct the expert appointment process based on the following considerations:

(i) The alleged personal relationship with a different arbitrator appointed by different parties in two separate cases has absolutely no bearing on Dr. Wühler's service in the present matter, as Prof. Böckstiegel has no involvement in this case and no interest in the Database verification process. There is no legal justification for a challenge to Dr. Wühler predicated on such attenuated ties – and Respondent offers none.

(ii) In this respect, Claimants stress the fact that in contrast to Dr. Wühler's lack of involvement in the other referenced ICSID cases, Dr. Torres Bernárdez is currently participating as an arbitrator in one, *Giordano Alpi and others v. Argentine Republic* (ICSID Case No. ARB/08/9). While Claimants expressed concerns for such double involvement, Respondent rejected outright such concerns, and must therefore be deemed to have waived the right to object to Dr. Wühler on purportedly similar – though far more attenuated – grounds.

(iii) Respondent's objections regarding Dr. Wühler's IT systems and language qualifications should be rejected, as (a) the Database is presented in a way sufficiently manageable, and Dr. Wühler's expertise includes the review of electronic databases in other mass proceedings; and (b) fluency in Italian is not required, because many of the documents are in both Italian and English, and those only in Italian present basic form information that does not require extensive translation.

(iv) Claimants further stress that Respondent does not suggest that the alternative candidate proposed by Dr. Torres Bernárdez is qualified for the Database verification process, or otherwise respond to Claimants' objections to this candidate.

(v) Claimants understand that the tasks entrusted to the expert under para 8(i) and 8(ii) of the draft Procedural Order involve confirming the availability and manageability of documentation. To this extent, they envisage that the expert will facilitate, not supplant, the Tribunal's decision-making process. Claimants have thus no objection thereto. To the extent, however, to which the draft Procedural Order would impermissibly provide for the expert's assessment to replace the Tribunal's judgment on an issue within the purview of the Tribunal, Claimants reiterate their prior statement that this requires correction. In this regard, Claimants reiterate that it would be more efficient to start the verification process after the submission of both Parties' Memorial.

(vi) Respondent's objections as to the nature and context of proceedings before the UNCC are entirely irrelevant to the expert review process in the present case. While Dr. Wühler's experience in the UNCC case should inform and facilitate his work within the context of this investment, the present case would not require the wholesale extrapolation of UNCC practices or procedures.

9. In its letter of 18 September 2012, Respondent reiterated its objections towards the appointment of Dr. Wühler as follows:

(i) With regard to Dr. Wühler's language skills, Dr. Wühler's knowledge of the Italian language is not sufficient.

(ii) With regard to Claimants' comments as to Dr. Wühler's independence, given that the identity of the Claimants is not yet clearly determined, it is unclear whether any of them may also be Claimants in the *Alpi v. Argentina* or *Alemanni v. Argentina* proceedings.

(iii) With regard to the appointment of a second expert, Claimants' objections based on considerations of efficiency are "ridiculous" in view of the risks of lack of independence of the expert raised by one of the arbitrators.

(iv) Dr. Wühler's experience with mass proceedings concern proceedings of a totally different nature than the proceedings necessary in the present case.

(v) Respondent share Claimants' concerns regarding the tasks delegated to the expert with regard to the verification of the requirements set out in para 501(iii) of the Decision on Jurisdiction.

B. The Arbitral Tribunal's Position

10. Having considered the Parties' comments to the draft of this Procedural Order, the Arbitral Tribunal, by majority decision, decides as follows:

1. Appointment of an Expert

11. As decided in para 4 of Procedural Order No. 12, the Arbitral Tribunal considers it necessary to appoint an independent expert (the "Expert") for the Database Verification.

12. The majority of the Arbitral Tribunal considers that, based on Articles 43 and 44 of the ICSID Convention and Rules 19 and 34 of the ICSID Arbitration Rules and on past practice of various ICSID tribunals,[1] it has competence to appoint an independent expert. In this respect, it should be noted that neither Party has contested the Arbitral Tribunal's competence to appoint an independent expert.

13. With regard to the number of experts to be appointed, it should be noted that none of the Parties have requested the appointment of two experts: Claimants expressly objected to the appointment of an additional expert considering that "*the involvement of more than one independent expert in the verification process would be inappropriate, as it would make the process inefficient, unwieldy, unnecessarily time-consuming, and expensive*". As to Respondent, it stated that an additional expert "*could have acted as a reciprocal*

[1] See for example AMT v Zaire, ICSID case No. ARB/93/1, Award of 21 February 1997; CMS v Argentina, ICSID Case No. ARB/01/8, Award of 12 May 2005; LG&E v Argentina, ICSID Case No. ARB/02/1, Award of 25 July 2007; Sempra v Argentina, ICSID Case No. ARB/02/16, Award of 28 September 2007; SOABI v Senegal, ICSID Case No. ARB/82/1, Award of 25 February 1988; Enron v Argentina, ICSID Case No. ARB/01/3, Award of 22 May 2007; LETCO v Liberia, Case No. ARB/83/2, Award of 31 March 1986, Benvenuti & Bonfant v Congo, ICSID Case No. ARB/77/2, Award of 15 August 1980; Schreuer, The ICSID Convention: A Commentary, 2nd Edition (2009), ad Art. 43 paras 11 and 97.

control", but this comment complemented Respondent's comments as to Dr. Wühler's independence and Respondent did not contend that there was a general need of appointing two experts. With regard to the dissenting arbitrator's proposal for an additional expert, it was also based on the following specific concerns regarding Dr. Wühler "*(a) of his long data professional relationship with an arbitrator appointed by Claimants in parallel sovereign debts cases; (b) his lack of knowledge of the Italian language which is the original language of the materials to be verified; and (c) the magnitude of the task for a single expert*". The majority of the Arbitral Tribunal therefore does not consider it necessary or appropriate to reconsider its previous position of appointing a sole expert.

14. The question, thus, is whether or not Dr. Wühler should be appointed as expert, or whether the objections raised by Respondent and the concerns expressed by Dr. Torres Bernárdez are sufficient to disqualify him.

15. After careful consideration of Respondent's objections and the dissenting arbitrator's concerns, the majority of the Arbitral Tribunal does not find these objections or concerns justified:

    (i) The alleged friendly relationship between Dr. Wühler and Prof. Böckstiegel is irrelevant. It has not been alleged nor does there exist any indication that this relationship would in any way influence Dr. Wühler's opinion and/or work in the present case. Nor has it been alleged or does there exist any indication that Prof. Böckstiegel lacks impartiality and independence as arbitrator in the *Alpi v. Argentina* case.

    (ii) It is common practice that experts involved in proceedings of this nature are assisted by a team of assistants with different areas of specialization.

    (iii) Dr. Wühler's knowledge and experience of mass databases is sufficient to deal with the present task of the Database Verification.

    (iv) Under the circumstances of this case, having also regard to the Database, Dr. Wühler's lack of Italian and/or Spanish language skills does not constitute sufficient reasons to disqualify him, as it will be fairly easy for him to be assisted by people with the necessary language skills if and when questions of language arise.

16. It should further be noted that Claimants objected to the appointment of Prof. José Carlos Fernández Rozas proposed as second expert by Dr. Torres Bernárdez , for lack of qualifications for the Database Verification, and that Respondent has not contended that Prof. Fernández Rozas would be qualified to act as expert in the present proceedings.

17. In view of the above, the majority of the Arbitral Tribunal is of the opinion that Dr. Wühler is duly qualified to act as Expert in the present proceedings.

18. Consequently, the majority of the Arbitral Tribunal decides to ask Dr. Wühler to prepare a "Work Proposal" according to the terms and conditions set out in section D below. After receipt of such Work Proposal and after having consulted the Parties thereon, the

Arbitral Tribunal will decide whether or not to confirm Dr. Wühler's appointment as Expert.

C. Scope of the Expert's Mission

19. Pursuant to the Arbitral Tribunal's decision set forth in para 713(x)-(xi) of the Decision on Jurisdiction and Admissibility, according to which the Tribunal has jurisdiction *ratione personae* over each Claimant who is a natural person and a juridical person "to the extent set forth above in § 501(iii)," the aim of the Expert's mission ("the Expertise") is to examine and verify the information contained in Claimants' Database for the purposes of the aforementioned para 501(iii):

    (i) With regard to natural persons,

    - Their nationality as of 14 September 2006 and 7 February 2007, specifying cases of dual nationality;
    - Their domicile prior to the date of alleged purchase of the relevant security entitlement by Claimants, and in case of a Claimant having his/her domicile in Argentina, the duration of such domiciliation period;

    (ii) With regard to juridical persons,

    - Their place of incorporation (i.e. *siège social*) and law of incorporation as of 14 September 2006;
    - Their form of incorporation;

    (iii) With regard to both natural and juridical persons,

    - The date of purchase, if any, of the relevant security entitlement by Claimants.

20. Some of the above issues may involve also legal considerations or trigger certain legal consequences. The Expert shall ignore such legal considerations and consequences, and approach these issues from a purely factual perspective, i.e. the Expert should focus on determining which factual conclusions can be drawn from the information and documents contained in the Database.

21. In examining and verifying the information contained in the Claimants' Database, the Expert shall pay particular attention to the following issues:

    (i) Whether or not the information contained in the Claimants' Database and the documents relating thereto appear to be comprehensive, i.e. sufficient to make the factual determinations set out in para 19 above;

    (ii) Whether or not the information contained in the Claimants' Database and the documents relating thereto are organized in a manageable and easily searchable way, which allow a reliable verification of the information in the Database against (a) the documents on which this information is based, and/or (b) the factual circumstances set out in para 19 above;

(iii) Whether or not the information contained in the Claimants' Database and the documents relating thereto contain any inconsistencies, discrepancies or any duplication or any vice affecting Claimants' Database or the documents themselves;

(iv) Whether or not the Expert encountered any particular difficulty in the conduct of the Expertise due to the design or functioning of Claimants' Database or the way information is organized;

(v) Any other issue that the Expert may consider sufficiently relevant to justify drawing the attention of the Arbitral Tribunal to.

22. In the conduct of the Expertise, the Expert may be assisted by one or more persons provided such person(s) is/are independent from each of the Parties and is/are subject to a duty of confidentiality. The Expert shall, before engaging and/or disclosing any relevant information to such person, disclose to the Arbitral Tribunal and the Parties the identity of the person(s) assisting him and seek approval from the Arbitral Tribunal. This information shall be included in the Work Proposal to be prepared by the Expert (see below para 23).

D. Terms and Conditions of the Expertise

23. **By 23 December 2013**, the Expert shall submit to the Arbitral Tribunal and the Parties a detailed Work Proposal, including a detailed description of his team, the methodology and steps he plans to follow (together with milestones), a (non-exhaustive) list of the documents and information he will need, as well as a detailed budget estimate of his fees and expenses.

24. In order for the Expert to be able to assess the nature and amount of work to be done, the Arbitral Tribunal shall provide the Expert by 22 November 2012 access to the Claimants' online Database. The information contained therein shall at first be used by the Expert exclusively for the purpose of preparing his Work Proposal. The submission of this information will not prevent the Parties from submitting further documents and information to the Expert according to the terms set out below in section E. The Expert will then rely on the Database and the additional documents submitted by the Parties to conduct its mission.

25. **By 4 January 2013**, the Parties may comment on the Expert's Work Proposal, and the Arbitral Tribunal will then decide whether or not to approve it.

26. **Remuneration and Expenses.** The Expert shall receive remuneration for time spent in relation to the preparation of the Work Proposal, the Draft Verification Report and the Final Verification Report, as well as reimbursement of his reasonably incurred expenses. The remuneration shall be calculated based on the time effectively spent by the Expert and his staff at rates to be determined in consultation with the Expert and the Parties. The Expert shall issue invoices on a monthly basis.

27. The costs of the Expertise, including the costs of preparation of the Work Proposal will be paid out of the advance on costs paid by the Parties.

28. According to Rule 34(4) of the ICSID Arbitration Rules, the costs incurred in relation to the Expertise are to be considered part of the expenses incurred by the Parties within the meaning of Article 61(2) of the ICSID Convention. The Arbitral Tribunal will decide on the final allocation of these costs in its Award.

E. Applicable Procedure for the Expertise

29. In case the Expert's Work Proposal is confirmed by the Arbitral Tribunal, each Party shall submit to the Expert **by 28 January 2013** any and all documents in their possession relating to the information contained in Claimants' Database or the use thereof, including in particular Claimants' Database itself in Excel and/or Access format as well as expert reports submitted in relation to the Database (e.g. the reports from Mr. Cremieux, Messrs Petersen and Mr. Kaczmarek).

30. In addition, Claimants and Respondent shall simultaneously send to the Expert:

    (i) An accompanying statement summarizing their position on the accuracy, reliability and comprehensiveness of the information contained in Claimants' Database as well as on the verification measures to be taken by the Expert. Such statement shall not exceed 30 pages.

    (ii) A "List of Annexes" containing all the documents submitted to the Expert. This List of Annexes shall be consecutively numbered. Claimants' annexes will be numbered "CExp-1, CExp-2", etc., and Respondent's annexes will be numbered "RExp-1, RExp-2". Annexes previously submitted in the present proceedings shall be identified as such in the List of Annexes by reference to their relevant Exhibit number.

31. The Parties shall limit their submission of documents to documents which are necessary for and directly relevant to the conduct of the Expertise and shall refrain from submerging the Expert with unnecessary or irrelevant documents. The Expert may freely appreciate the relevancy of any documents submitted to him.

32. Where a Party submits to the Expert documents which are not already part of the record of the present proceedings, it shall provide the other Party with a copy of such documents.

33. The Expert will, upon verification and examination of the documents submitted to him under para 29 above, issue to the Arbitral Tribunal and the Parties a draft report **in English** ("Draft Verification Report") **by 15 March 2013**.

34. The Draft Verification Report shall contain the following information (though not necessarily in this order):

    (i) The full name and address of the Expert, and a description of his background, qualifications, training and experience, together with a similar description of the person(s) who assisted the Expert;

(ii) A statement of the facts on which he is basing the Draft Verification Report and the opinions and conclusions contained therein;

(iii) A description of the methods, evidence and information used in arriving at the conclusions contained in the Draft Verification Report;

(iv) His expert opinions and conclusions on each and every requirement set out above in para 19;

(v) His comments regarding the issues set out in para 21.

(vi) An affirmation of his genuine belief in the opinions expressed in the Draft Verification Report in accordance with Rule 35(3) of the ICSID Arbitration Rules;

(vii) The signature of the Expert and its date and place;

(viii) A list of all documents relied upon in reaching his opinions, conclusions or comments. Documents on which the Expert relies that had not previously been submitted shall be provided.

35. Within 10 days of the issuance of the Draft Verification Report, the Expert (with the assistance of the ICSID Secretariat) shall arrange for a Spanish translation to be sent to the Arbitral Tribunal and the Parties.

36. The Parties will then be given the opportunity to comment on the Draft Verification Report **by 15 April 2013**.

37. The Expert shall then examine these comments and issue a Final Verification Report to the Arbitral Tribunal **by 30 April 2013**.

38. Within 10 days of the issuance of the Final Verification Report, the Expert (with the assistance of the ICSID Secretariat) shall arrange for a Spanish translation to be sent to the Arbitral Tribunal and the Parties.

F. Rules of Conduct and Communications

39. All written communications (including submissions of documents under para 29 above) between the Expert and a Party shall be simultaneously copied to the Arbitral Tribunal and the ICSID Secretariat. There shall be no oral communications between the Expert and a Party, unless otherwise previously approved by the Arbitral Tribunal.

40. Except where expressly invited by the Expert and/or the Arbitral Tribunal, neither Party may directly communicate with the Expert. A Party wishing to file any request or submit additional information to the Expert must ask for prior leave to do so from the Arbitral Tribunal.

41. If, after submission of the relevant documents according to para 29 above, the Expert considers it necessary, he may request further documents or information from the Parties and the Parties shall promptly submit such documents or information to the Expert.

42. Where, in the conduct of the Expertise, the Expert encounters any difficulties, or requires further instructions, he may address requests for further information to the President of the Arbitral Tribunal. Before answering a request, the President will consult the co-arbitrators, and inform the ICSID Secretariat and the Parties of any such request.

G. Amendment of Procedural Order No. 12

43. Regarding the exchange of written submissions following the document production process, the Arbitral Tribunal decides to make the following amendment to the mechanism provided in Procedural Order No. 12 (paras 6-7 of the decisional section) as follows.

44. Considering that Claimants have been given the right to address issues of individual jurisdiction in their Memorial on Phase 2, Respondent may respond thereto in its Counter-Memorial on Phase 2. If and to the extent that Respondent does address issues of individual jurisdiction in its Counter-Memorial on Phase 2, Claimants may respond to such issues in the Memorial of Reply. If and to the extent that Claimants do so, Respondent may reply in the Memorial of Rejoinder.

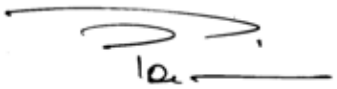
45. In principle, there will be no further written submission by Claimants on these issues, unless the scope of the individual jurisdictional issues addressed in Respondent's Memorial of Rejoinder go beyond a mere 'reply' to Claimants' arguments as contemplated in their Memorial of Reply, and include new arguments or documents. In such case, the Arbitral Tribunal may, in due time and upon request of Claimants, grant the latter a last opportunity to respond. The order of the submissions as decided by the Tribunal shall not affect the burden of proof, which shall be determined in accordance with the applicable law and rules.

46. In view of the above considerations, as well as the decisions taken previously by the Arbitral Tribunal in Procedural Orders Nos. 13 and 14, the Timetable attached to Procedural Order No. 12 is hereby modified as attached hereto.

The decisions made in this Procedural Order have been made jointly by <u>the majority of the members of the Arbitral Tribunal</u>.

Dr. Torres Bernárdez has issued a separate 'Dissenting Opinion', which is attached hereto.

The majority of the Arbitral Tribunal considers the critiques therein unjustified.



_____

Pierre Tercier,

President

On behalf of the majority of the Arbitral Tribunal

Annexes:

- Annex 1: CV of Dr. Wühler and declaration of acceptance and independence.
- Annex 2: Revised Timetable

DR. NORBERT WÜHLER

Place des Perrieres 7
CH-1296 Coppet
Switzerland
Tel (mob): + 41 79 6118311
E-mail: nwuehler@iom.int

Areas of Expertise
International claims and reparations, arbitration, dispute settlement

Professional Experience

Member, Kosovo Property Claims Commission (KPCC)	since 2007
International Organization for Migration (IOM), Geneva, Switzerland: Director, Reparation Programs	2000-2010
United Nations Compensation Commission (UNCC), Geneva, Switzerland: Chief, Legal Service	1992-2000
Iran-United States Claims Tribunal, The Hague, Netherlands: Legal Assistant of the President and Deputy Secretary-General	1983-1991
Bars of Heidelberg and Mannheim, Germany: Attorney-at-law	1979-1983
Max Planck Institute for International Law, Heidelberg, Germany: Research Fellow	1977-1983

Other Professional Functions
Sole Arbitrator, Member and Chairman of international arbitral tribunals under the ICC Arbitration Rules, the UNCITRAL Arbitration Rules, ad hoc rules, and under Bilateral Investment Treaties
List of Conciliators, International Centre for Settlement of Investment Disputes (ICSID)

Education

Doctor of Law, University of Heidelberg, Germany	1984
Second State Examination in Law, Stuttgart, Germany	1976
First State Examination in Law, University of Heidelberg, Germany	1973

Professional Associations
International Bar Association
International Law Association, Member, Committee on International Commercial Arbitration and Committee on Reparation for Victims of Armed Conflict
German Society for International Law
German Arbitration Institution
Swiss Arbitration Association

Nationality
German

Languages
English, French, German (mother tongue), basic Spanish, some Italian

Concern: **Enquiry regarding the potential appointment as expert in *Abaclat and others vs. Argentine Republic* (ICSID Case No. ARB/07/5)**

Dear Professor Tercier,

This letter is in reply to the letter sent to me by the majority of the Arbitral Tribunal, and transmitted to me by your letter, concerning the referenced matter.

Please find my answers to the enquiries in the letter of the majority of the Arbitral Tribunal as follows:

- I would be willing and available to act as tribunal-appointed expert in these proceedings;

- As set out in the enclosed declaration of independence, I consider myself to be independent and impartial with regard to the Parties and the subject matter of the dispute, and I am not aware of anything that may cause me to be subject to a conflict of interest.

- Based on my professional background and experience, I consider having the necessary qualifications and skills to conduct and complete the envisaged scope of mission. I have recently performed two similar missions: a review of the organization and operation of the UN Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory (UNRoD) included an examination of its claims database; and an assessment of a database containing the records of the UN Conciliation Commission for Palestine (UNCCP) focused on its usability in a potential claims program.

  I would seek one clarification concerning the scope of mission and suggest one addition to it as follows:

  (i) The clarification is sought with respect to the meaning of the term "documents" as used in paragraph 8 (i), (ii) and (iii) and paragraph 10, first sentence, of Draft Procedural Order No. 13. Are these all the physical documents on which the information with respect to each individual (natural and juridical) person contained in the Claimants' Database is based? If so, what is their volume, and should the tasks set out in paragraph 8 (i), (ii) and (iii) also be performed with respect to all these physical documents? If these are not the physical documents underlying the information with respect to each claimant, what is the nature and volume of these documents?

  (ii) I suggest to add to paragraph 8 (iii) of Draft Procedural Order No. 13 the examination of whether the data in the Claimants' Database contains duplicates of natural and/or juridical persons and the related information;

- I believe that I would be in a position to conduct and complete the verification process as sole expert. I would, however, propose the addition of two assistants:

(i) An IT systems analyst with experience in database development and management in the context of mass claims processing, to assist in the assessment of the reliability, security and usability of the Claimants' Database from a technical user point of view;

(ii) A person with the necessary language skills to assist with any required translation of Italian language documents or data into English, preferably with experience in mass claims processing and the related database usage;

(iii) Depending on the nature and volume of the documents referred to in my request for clarification above and the tasks required in relation to them, additional assistance may be needed to complete these tasks within the required timeframe.

I will be happy to provide any additional information or clarification that might be required.

I hereby confirm that I will handle this matter with the necessary discretion and keep the information communicated to me strictly confidential.

With best regards,

N. Wühler

Norbert Wühler

Encls.:
CV
Declaration of independence

Concern: **Enquiry regarding the potential appointment as expert in *Abaclat and others vs. Argentine Republic* (ICSID Case No. ARB/07/5)**

Declaration of Independence

I consider myself to be independent and impartial with regard to the Parties and the subject matter of the dispute, and I am not aware of anything that may cause me to be subject to a conflict of interest. In view of the particularities of this case, I note two specific items.

I do not know the identity of the natural and juridical persons who are the Claimants in this case. I have, however, had no professional or other relevant relationship with any natural or juridical person of Italian nationality.

In my capacity as the Director of IOM's German Forced Labour Compensation Programme (GFLCP), I was responsible for the overall direction and management of the processing and resolution of the claims submitted to GFLCP which included approximately 130,000 claims submitted by Italian nationals. I do not know whether any of the Italian claimants under GFLCP are among the Claimants in this case. As Director of the Programme, I was not engaged in the examination, review, assessment or resolution of any of the individual claims. Like all staff of GFLCP, I was under an obligation to perform my duties with independence and impartiality, which I did.

Coppet, 26 August 2012

Dr. Norbert Wühler

ICSID Case ARB/07/05
Timetable to Procedural Order No. 15 dated 20 November 2012

		DATE	PARTY	DESCRIPTION	REFERENCE
2A	1.	30 Sept 12 (2 months)	Claimants	Claimants' Memorial on Phase 2 (CL MP2)	PO No. 12 para 2(i) & PO No. 13 para 67(B)(iii)
	2.	23 Dec 12 (2 months)	Respondent	Respondent's Memorial on Phase 2 (RSP MP2)	PO No. 13 para 67(B)(iii) & PO No. 14 para 1
2B	3.	23 Dec 2012	External Expert(s)	Submission of the Expert's Work Proposal	PO No. 15, para 23
	4.	4 Jan 2013	Claimants & Respondent	Submission of Comments to Expert's Proposal	PO No. 15, para 25
	5.	7 Jan 2013	Requesting Party	Request for Document Production in form of Redfern Schedule	PO No. 12, para 5 & PO No. 15 para 46
	6.	14 Jan 2013	Tribunal	Decision on the Expert's Proposal	PO No. 15, para 25
	7.	21 Jan 2013 (2 weeks)	Producing/ Objecting Party	Production of non-contentious documents and filing of objections concerning contentious document requests	PO No. 12, para 5 & PO No. 15 para 46
	8.	28 Jan 2013	Claimants & Respondent	Submission of Summary & Documents to Expert (provided his Work Proposal is confirmed)	PO No. 15, para 29
	9.	4 Feb 2013 (2 weeks)	Requesting Party	Answer to objections concerning contentious document requests	PO No. 12, para 5 & PO No. 15 para 46
	10.	18 Feb 2013 (2 weeks)	Objecting Party	Reply to answer to the objections concerning contentious document requests	PO No. 12, para 5 & PO No. 15 para 46
	11.	11 Mar 2013 (3 weeks)	Tribunal	Decision on Document Production Requests	PO No. 12, para 5 & PO No. 15 para 46
	12.	15 Mar 2013	External Expert(s)	Draft Report on the verification of Claimants' database	PO No. 15, para 33
	13.	25 March 2013	Claimants & Respondent	Production of documents according to the Tribunal's decision	PO No. 12, para 5 & PO No. 15 para 46
	14.	15 Apr 2013	Claimants & Respondent	Comments on Draft Report on the verification of Claimants' database	PO No. 15, para 36
	15.	30 Apr 2013	External Expert	Final Report on the verification of Claimants' database (Database Verification Report)	PO No. 15, para 37
2C	16.	1 Jul 2013 (2 months)	Claimants	Reply on Respondent's Memorial on Phase 2 (CL ReplyMP2)	PO No. 12, para 6 & PO No. 15, paras - 43-44
	17.	2 Sept 2013 (2 months)	Respondent	Rejoinder on Claimants' Reply Memorial on Phase 2 (RSP RejMP2)	PO No. 12, para 6 & PO No. 15, paras 43-44
	18.	16 Sept 2013 **(TBC)**	Claimants	Rejoinder Memorial on Jurisdiction regarding new arguments or documents, if any	PO No. 12, para 6 & PO No. 15, para 45
	19.	Oct/Nov 2013 TBC	ALL	Hearing on Phase 2 (Hearing P2)	PO No. 12, para 8 & PO No. 15, para 46
	20.	TBD	Claimants & Respondent	Post-Hearing Briefs	PO No. 12, para 9
	21.	TBD	Tribunal	Decision on Phase 2	