

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf
of Paria B.V.**

Respondents on Annulment / Claimants

v.

Bolivarian Republic of Venezuela

Applicant / Respondent

**(ICSID Case No. ARB/07/30)
Annulment Proceeding**

**DECISION ON THE APPLICANT'S REQUEST TO CONTINUE THE
STAY OF ENFORCEMENT OF THE AWARD**

Members of the Committee

Judge Dominique Hascher, President of the *ad hoc* Committee
Professor Diego Fernández Arroyo, Member of the *ad hoc* Committee
Mr. Kap-You (Kevin) Kim, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Mr. Francisco Grob

2 November 2020

TABLE OF CONTENTS

I. Procedural Background.....	1
II. Parties' Submissions	3
A. The Applicant.....	3
1) Curtis:	3
2) De Jesús:	4
B. The Respondents on Annulment	5
III. Committee's Analysis	6
A. The ICSID Convention framework on enforcement and stay of awards	6
B. Venezuela's arguments in support of the Continuation of the Stay (to be discussed)....	8
1) The likelihood of an annulment of the Award.....	8
2) The absence of prejudice caused to Conoco by deferring enforcement	9
3) The amount of compensation ordered in the Award and Venezuela's economic situation	11
4) The prospects of effective enforcement of the Award	13
5) The risks of non-recoupment of the award monies by Venezuela	15
IV. Decision.....	16

I. Procedural Background

1. On 16 December 2019, the Centre wrote to the Parties in reference to “the Application for Annulment submitted by Mr. George Kahale on November 27, 2019, and by Dr. Alfredo De Jesús O. on December 5, 2019, on behalf of the Bolivarian Republic of Venezuela.” The Parties were informed that the Secretary-General “registered an Application for Annulment of the Award rendered on March 8, 2019” and that, pursuant to ICSID Arbitration Rule 54(2), “the enforcement of the Award [was] provisionally stayed” as requested by Venezuela.¹
2. On 3 February 2020, the Committee was constituted, and the Parties were informed that the annulment proceedings were deemed to have begun.
3. On 4 February 2020, the Respondents on Annulment (hereinafter the “Conoco Parties” or the “Claimants”) opposed to Venezuela’s request to continue the stay of enforcement.
4. On 18 February 2020, the Committee fixed 16 March 2020 for Venezuela’s response on the stay of enforcement of the Award. The Parties were also informed that pursuant to Arbitration Rule 54(2), the Committee extended the stay of enforcement until the Committee had heard the Parties and it is in a position to reach a final determination on this matter.
5. On 16 March 2020, De Jesús and Curtis submitted each a response on Claimants’ Opposition to Venezuela’s request to continue the stay of enforcement of the Award.
6. Having considered the Parties’ positions, the Committee invited the Parties on 3 April 2020 to elaborate upon the following six matters by 14 April 2020:
 - 1) Have the Conoco Parties and Venezuela had any contact regarding the enforcement of the Award? What enforcement actions (if any) did the Conoco Parties take after the Award was rendered until enforcement was stayed by the Secretary-General of ICSID upon registration of the Application for Annulment? What are the prospects of enforcing the Award outside the United States?
 - 2) Can any non-compliance be directly linked to economic difficulties and/or the US sanctions? Is this relevant for purposes of the Committee’s decision on whether to maintain or lift the stay of enforcement of the Award?
 - 3) What would be the specific prejudice of deferring enforcement of the Award to a later date having regard to Venezuela’s alleged refusal or inability to honour any award presently and to the freezing of its assets in the US? Are there other creditors that enjoy priority of payment over the Conoco Parties?
 - 4) What steps have the Conoco Parties taken to obtain such license and what is the likelihood that they may be granted one soon? What effect, if any, can have such sanctions on the Conoco Parties’ ability to return any funds paid on the Award if annulled? Would the Conoco Parties be willing to give an undertaking that all amounts recovered as a result of enforcement actions will be placed in escrow or with a trustee that is not subject to the sanctions for the duration of the annulment

¹ Application for Annulment of 27 November 2019, ¶ 84; Application for Annulment of 5 December 2019, ¶ 84.

proceedings?

- 5) What would be the precise impact of the Award's enforcement on Venezuela's State budget? What efforts, if any, has Venezuela taken to restructure its debt and how can this have an effect on Venezuela's ability to pay awards rendered against it?
- 6) What is the financial situation of the Conoco Parties at present? How does the outcome of this proceeding affect the Conoco Parties' accounts?
7. The Parties' responses were received on 14 April (the Conoco Parties and Curtis) and on 15 April (De Jesús) 2020.
8. On 16 April 2020, the proceedings were suspended as a result of a proposal to disqualify the three Members of the Committee submitted by Dr. Alfredo De Jesús O. on behalf of Venezuela. On 10 August 2020, the disqualification proposal was dismissed by the Chairman of the Administrative Council, and the proceedings resumed.
9. On 23 July 2020, the Conoco Parties wrote to update the Committee on questions 3 and 4 above.
10. Pursuant to the Committee's invitation on 24 July 2020, Venezuela (Curtis and De Jesús) replied on 3 August 2020.
11. Pursuant to a request on 4 August 2020, the Committee allowed the Conoco Parties to answer by 12 August 2020, which they did.
12. On 13 August 2020, Venezuela (De Jesús) sought leave to reply to the Conoco Parties' August 12 submission.
13. Venezuela (De Jesús) filed its reply on 20 August 2020 requesting production of OFAC authorizations.
14. On 18 September 2020, Venezuela (De Jesús) reiterated its document production request.
15. On 21 September 2020, the Committee replied that unless the Conoco Parties would like to add anything to their letter of 12 August 2020 regarding the OFAC authorizations, De Jesús' request for an order to produce such authorizations would be one of the issues at the hearing on 30 September which the Parties may address.
16. The Conoco Parties answered on 23 September 2020 that they did not intend to supplement their letter of 12 August 2020 regarding OFAC authorizations.
17. On 30 September 2020, the Committee held a hearing by videoconference with the Parties. The Parties discussed whether the stay of enforcement of the Award should be maintained or not.

II. Parties' Submissions

A. The Applicant²

1) Curtis:

18. Venezuela declares in its Response to Claimants' Opposition to Continuation of the Stay of Enforcement of the Award of 16 March 2020 that the exceptional circumstances of the case warrant maintenance of the stay, irrespective of the standards to be applied.³ Venezuela also rejects the Conoco Parties' allegations concerning Venezuela's alleged misconduct during the arbitration proceedings as well as the Conoco Parties' statements in respect of Venezuela's compliance with other awards.⁴
19. Venezuela argues that the irreparable harm to Venezuela should the Award be enforced vastly outweighs Conoco's interest in lifting the stay.⁵ Several Decisions of *ad hoc* committees have taken into account the burden that would be imposed on States in light of their economic situation. Precisely, Venezuela's economy is in the midst of a crisis of historic proportions and the unprecedented amount of the Award, which represents over 13,5% of its estimated GDP in 2020, would risk precipitating a chaotic run on Venezuela's assets and undermine any attempt to persuade creditors to participate in a voluntary, orderly and comprehensive restructuring of Venezuela's debt.⁶
20. The Applicant avers that the Conoco Parties identify no prejudice if the stay is maintained in a case which has been pending for almost thirteen years, essentially due to Conoco's actions in the arbitration.⁷ The Conoco Parties' prejudice for waiting another year after 13 years since the nationalization of their assets would not be enormous because their wait will become permanent after annulment as Curtis places emphasis on the seriousness of the issues raised in the Application.⁸
21. Venezuela clarifies that Conoco commenced two actions in Delaware against PDVSA, Venezuela's national oil company, and its US subsidiaries which have been dismissed.⁹ The Conoco Parties will not be able to take the Award and proceed against PDVSA without proof it is the alter ego of the Republic.¹⁰ The Applicant explains that enforcement of the Award in the United States is prohibited in light of the sanctions issued by the Office of Foreign Assets Control ("OFAC"). All of Venezuela's assets in the United States have been frozen and cannot be attached absent a specific license from OFAC which Conoco has not obtained. Conoco would also not be able to hold the funds in escrow and return them to Venezuela without a specific license.¹¹ Venezuela notes that the Conoco Parties are Dutch shell subsidiaries of a major US oil company which

² In summarizing the Applicant's position, the Committee follows the chronological order in which the Applications for Annulment were received. No preference should be inferred therefrom.

³ Curtis' Submission of 16 March 2020, ¶ 18.

⁴ Curtis' Submission of 16 March 2020, ¶¶ 5-16.

⁵ Curtis' Submission of 16 March 2020, ¶¶ 23-27.

⁶ Curtis' Letter of 14 April 2020, p. 4.

⁷ Curtis' Submission of 16 March 2020, ¶¶ 19-22.

⁸ English Transcripts, pp. 31: 14-25, 32, 34: 11-17, 35: 4-18.

⁹ Curtis' Letter of 14 April 2020, p. 2.

¹⁰ English Transcripts, pp. 37: 4-25, 38: 1-23.

¹¹ Curtis' Letter of 14 April 2020, p. 4.

have been formed only to take advantage of the Netherlands-Venezuela BIT.¹²

2) De Jesús:

22. Venezuela declares in the Response to the Opposition to Continue the Stay of Enforcement of the Award on 16 March 2020 that the Committee is empowered to maintain the stay until the decision on annulment is rendered.¹³ Notwithstanding the lacuna found in the ICSID Convention and the ICSID Arbitration Rules on how a stay of enforcement should be treated, *ad hoc* committees have accepted that they enjoy discretionary powers to decide a stay. Venezuela says it has identified a general practice of *ad hoc* committees of rulings in favor of maintaining the stay.
23. Venezuela suggests that the Committee takes into account the following circumstances:
- a) whether the application for annulment is submitted in good faith;
 - b) whether there is a risk of non-compliance of the challenged award by the applicant in the event the award is not annulled;
 - c) whether the balance of harms is in favor of the continuance of enforcement, namely whether termination of the stay would cause significant and irreparable injury to the award debtor and the award creditor would be prejudiced if the stay of enforcement continues pending a decision on annulment.¹⁴
24. Venezuela affirms that it has always acted in compliance with its international obligations arising from the ICSID Convention in the arbitration proceedings and in challenging the Award.¹⁵ Venezuela describes as the epitome of serious grounds for annulment, arbitral proceedings led by a majority that fails to meet the requirements of independence and impartiality and that is capable to refuse to consent to the resignation for health reasons of Venezuela's appointed arbitrator, and then further decides to obstruct the regular course of the proceedings by denying the Republic's right to appoint its arbitrator. The preceding combined with the Arbitral Tribunal's manifest excess of powers in connection with its findings, its disregards of the taking and evaluation of evidence, its contradictory and inadequate conclusions and its utter disregard of points of law and fact are also serious grounds for annulment.
25. Venezuela further says that neither the denunciation of the ICSID Convention in January 2012, nor political declarations by its former President and Minister of Foreign Affairs made in the context of denouncing abuses of the arbitration system by a foreign investor or decisions of the Venezuelan Supreme Court, are valid reasons to question Venezuela's compliance with its international obligations under ICSID.¹⁶ Venezuela contends that it does not have a pattern of non-compliance with ICSID obligations, and that, when it happened, the payment of award creditors was made impossible due to the sanctions imposed by the United States.¹⁷ The general rule under international law is that a sovereign State's good faith must always be presumed even if it has committed

¹² Curtis' Letter of 14 April 2020, p. 5.

¹³ De Jesús' Submission of 16 March 2020, ¶¶ 13 *et seq.*

¹⁴ De Jesús' Submission of 16 March 2020, ¶ 23.

¹⁵ De Jesús' Submission of 16 March 2020, ¶¶ 25-37.

¹⁶ De Jesús' Submission of 16 March 2020, ¶¶ 38-53.

¹⁷ De Jesús' Submission of 16 March 2020, ¶¶ 54-62.

wrongful acts in the past.¹⁸

26. Venezuela alleges that it will suffer irreparable harm if the stay is not maintained.¹⁹ It points out that the amount of the Award of over USD 8,5 billion is the largest in ICSID history and that an immediate enforcement would require the Republic to allocate considerable sums of its Gross Domestic Product (“GDP”) to comply with a 985.5% inflation rate. Venezuela also says that the Committee should take into consideration the deliberate aggravation of its economic situation by a framework of illegitimate economic, financial and commercial US sanctions which also frustrate the Republic’s efforts to discuss with creditors an organized payment process.²⁰ The COVID-19 crisis is now on top of the profound economic crisis inflicted by the US Government.²¹
27. Venezuela adds that an immediate payment of the Award, should it be subsequently annulled, would put it at risk of not being able to recover the amount paid. First, the Conoco Parties are shell companies with precarious financial health. Second, the US sanctions program would also make it impossible to recover payment.
28. As contrasted, says Venezuela, the Conoco Parties would bear no prejudice from the continuance of the stay.²² In particular, the Conoco Parties are unable to attach Venezuela’s assets frozen in the United States without a license from OFAC. The Republic finally points out that the Conoco Parties are safeguarded by the accrual of the 5,5% compound interest rate ordered in the Award.

B. The Respondents on Annulment

29. The Conoco Parties recall in their Opposition to Venezuela’s Request to Continue the Stay of Enforcement of the Award on 4 February 2020 (“the Stay Opposition”) that ICSID awards are immediately enforceable, that only exceptional circumstances may justify a stay, that the party seeking the stay bears the burden of establishing such circumstances and that a stay must be lifted if there is a material risk of an award debtor’s non-compliance with an award.²³
30. The Conoco Parties say that they received no response from Venezuela to their demand letter for payment of the Award and they therefore commenced actions in several jurisdictions to enforce the Award.²⁴ However, Venezuela’s policy is not to comply with ICSID awards.²⁵ The Conoco Parties refer to declarations of the Venezuelan highest public authorities that the country will not comply with adverse ICSID awards which, the Conoco Parties say, are binding on Venezuela as a matter of international law. In addition, Venezuelan courts have held that ICSID Convention obligations cannot be enforced if inconsistent with Venezuela’s Constitution. The Conoco Parties contend that all post-Chavez ICSID awards rendered against Venezuela remain unpaid and that their enforcement has been resisted at every opportunity.²⁶ Because of its economic

¹⁸ English Transcripts, p. 17: 1-17.

¹⁹ De Jesús’ Submission of 16 March 2020, ¶¶ 63-75.

²⁰ The Conoco Parties’ Letter of 14 April 2020.

²¹ English Transcripts, p. 22: 8-19.

²² De Jesús’ Submission of 16 March 2020, ¶¶ 76-82.

²³ The Conoco Parties’ Submission of 4 February 2020.

²⁴ The Conoco Parties’ Letter of 14 April 2020, pp. 1-3.

²⁵ The Conoco Parties’ Submission of 4 February 2020, ¶¶ 21-28.

²⁶ The Conoco Parties’ Submission of 4 February 2020, ¶¶ 29-32.

mismanagement, Venezuela is alone responsible for its situation.²⁷ There exists no requirement that award creditors negotiate settlements for discounted sums paid over long periods in lieu of the full and final payment that the ICSID Convention mandates.²⁸ Any deferral of time significantly reduces the prospect for the Conoco Parties to collect on the Award.²⁹ As a part of its obstructive tactics, Venezuela has taken steps to render itself immune from enforcement actions in the United States in order to frustrate the collection of award monies.³⁰ As a result, the Conoco Parties' prospects for enforcement of the Award diminish with the passing of time.³¹

31. The Conoco Parties remark that post-award interests merely protect against the passage of time and are not a protection against the refusal of the debtor to honor the award.³² Given the twelve arbitrations pending against Venezuela and the thirteen currently outstanding investment treaty awards to pay, and in the context of the contracting economy of Venezuela which has defaulted on all its sovereign debt, the Respondents on Annulment contend that they will be seriously and irreversibly prejudiced unless immediate enforcement of the Award is allowed. Now that they have authorization from the US Government to execute upon certain assets, any delay is harm.³³ Conoco remark that Venezuela is alone responsible for the present economic circumstances which cannot be raised as a justification for the continuation of the stay. Conoco, which underline that there is no material risk that they would not be able to repay sums owing if the Award is annulled, are willing to earmark funds received during the pendency of the annulment proceedings or to consider other similar protective measures.³⁴

III. Committee's Analysis

A. The ICSID Convention framework on enforcement and stay of awards

32. Under the ICSID Convention, the award creditor has a right to enforcement of the award. Article 53(1) of the ICSID Convention unambiguously states that awards have *res judicata* effect and are immediately enforceable from the date on which the certified copies are dispatched to the parties.³⁵ The Parties do not dispute that Article 53(1) of the Convention explains that a stay of enforcement is an exception to the obligation of the parties to "abide by and comply with the terms of the award".³⁶ Effective recognition and enforcement is emphasized by the requirement that an ICSID award must be complied with, subject to possible interpretation, revision or annulment envisaged at Articles 50, 51 and 52 of the ICSID Convention.
33. The award creditor needs to take no further step to secure the award's enforceability

²⁷ The Conoco Parties' Letter of 14 April 2020, pp. 17-19.

²⁸ English Transcripts, p. 54: 6-14.

²⁹ The Conoco Parties' Letter of 14 April 2020, pp. 11-14.

³⁰ The Conoco Parties' Submission of 4 February 2020, ¶¶ 33-41.

³¹ The Conoco Parties' Letter of 14 April 2020, pp. 3-5.

³² The Conoco Parties' Submission of 4 February 2020, ¶ 43.

³³ English Transcripts, p. 60: 13-19.

³⁴ The Conoco Parties' Letter of 14 April 2020, pp. 16, 17, 20, 21.

³⁵ Article 53(1) of the Convention provides as follows: "[t]he award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention."

³⁶ In particular, De Jesús' Submission of 16 March 2020, ¶ 20.

besides proving its authenticity as stated at Article 54(2) of the ICSID Convention.³⁷ In contrast, the award debtor must apply for a stay and advance the reasons which justify the stay.³⁸ If a stay is granted, the obligation to comply with the award is suspended. The award may no more be subject to the enforcement procedure of Article 54 of the Convention until the *ad hoc* committee decides on the application for annulment. As explained in Article 52(5) of the Convention, a stay of enforcement is never automatic: “[t]he Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request”. *Ad hoc* committees accept that there is no presumption in favour of maintaining the stay, the circumstances of which must be proven by the requesting party.³⁹

34. Venezuela has requested a stay in its Application(s) for Annulment within the above-mentioned context of the ICSID Convention. In accordance with ICSID Rule 54(2), a provisional stay of the Award was ordered by the Secretary-General of ICSID on 16 December 2019, and the matter came before the Committee upon opposition of the Conoco Parties on 4 February 2020 to continue the stay.
35. The provisional stay accorded by the Secretariat remains effective until the *ad hoc* committee is constituted and rules by priority on the stay in pursuance of ICSID Rule 54(1) and (2). As noted by the *ad hoc* Committee in *Sempra v. Argentina*, there is no presumption in favour of maintaining the initial provisional stay of enforcement which the Secretariat has no discretion to refuse.⁴⁰
36. De Jesús suggests that the case by case approach followed by committees shows a favor for the continuance of the stay of enforcement.⁴¹ The practice of *ad hoc* committees is however more diverse: “The practice of previous annulment cases has consisted in the granting of the continuance of the stay. This trend has led some ad hoc committees to conclude that there would be a presumption in favor of the continuance of the stay. However, recent decisions tend to confirm that no such presumption exists”.⁴² At any rate, the alleged fact that *ad hoc* committees may have statistically granted a stay does not allow to conclude about the automatic nature of such stay. The Committee cannot agree more with Curtis that “the decision whether or not to lift the stay cannot be made in the abstract, nor should it be an automatic knee-jerk reaction based on some made-up rule of general application”.⁴³

³⁷ Article 54(2) requires the award creditor to prove the authenticity of the award by furnishing the competent court or other authority of a Contracting State with a copy of the award certified by the Secretary-General of ICSID.

³⁸ Arbitration Rule 54(1) and (4).

³⁹ *Churchill Mining Plc and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Decision on the Request for Continued Stay of Enforcement of Award, 27 June 2017, ¶ 34; *Tenaris S.A. and Talta -Trading e Marketing Sociedade Unipessoal Lda v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/26, Decision on the Request to Maintain the Stay of Enforcement of the Award, 24 March 2017, ¶ 74 [hereinafter *Tenaris I*].

⁴⁰ *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Decision on the Argentine Republic’s Request for a Continued Stay of Enforcement of the Award, 5 March 2009, ¶ 27 (A/CLA-16).

⁴¹ De Jesús’ Submission of 16 March 2020, ¶ 18.

⁴² *Elsamex, S.A. v. Republic of Honduras*, ICSID Case No. ARB/09/4, Decision on Elsamex S.A.’s Preliminary Objections, 7 January 2014 ¶ 86 (A/RLA-4).

⁴³ Transcripts, p. 29: 20-23.

37. The right to enforce a decision is one aspect of the right of access to justice which is one component of the Rule of Law that the ICSID Convention purports to achieve in the settlement of international investment disputes. Access to justice is, however, not an absolute right and the Convention provides a limitation by allowing the possibility of a stay until the date of the decision on annulment. An *ad hoc* Committee has all latitude to find the proper balance between the interests of the Applicant for a stay and the Respondent's legitimate right to enforce the award.⁴⁴ It is not possible to give a catalog of all factors to be taken into account in the confrontation of the rival interests involved. The Committee will have to examine the facts to see if the circumstances specified by Venezuela in furtherance of ICSID Rule 54(4) to justify continuation of the stay exist.
38. Before we delve into any balancing exercise, the Conoco Parties denounce an abuse of the ICSID system by Venezuela which, it says, launches annulment proceedings reflexively in the hope of buying itself a stay and some time as is demonstrated by Venezuela's applications to annul all twelve of ICSID awards rendered against it since 2003. The extraordinary nature of the annulment mechanism of the ICSID Convention would thus have become a routine step in Venezuela's strategy of delay.⁴⁵
39. The Committee observes that applying for annulment is a right under the ICSID Convention. Pending a decision on annulment, Venezuela can only address the Committee for a stay under Article 52(5) of the ICSID Convention, to the exclusion of the competent court or authority of the Contracting State where enforcement is sought mentioned in Article 54(2) of the ICSID Convention.
40. As advanced by another *ad hoc* Committee in *Flughafen*,⁴⁶ this Committee cannot speculate on Venezuela's non-compliance with international awards to hold abusive the request to maintain the stay of enforcement until the conclusion of the annulment proceedings. The Committee likely endorses the statement of the *ad hoc* Committee in *Enron v. Argentina* which held that "the Committee must assume that any application for annulment is made in good faith, and that the application for a stay is a justified exercise of the applicant's procedural rights of defence".⁴⁷
41. Having thus found the absence of an abuse of process on the part of the Applicant, we now move to review the circumstances identified by Venezuela that would be sufficiently compelling in the present case to require a continuation of the stay.

B. Venezuela's arguments in support of the Continuation of the Stay (to be discussed)

1) The likelihood of an annulment of the Award

⁴⁴ *Ioannis Kardassopoulos and Ron Fuchs v. Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Decision on the Stay of Enforcement of the Award, 12 November 2010, ¶ 29 (A/CLA n° 10) [hereinafter *Kardassopoulos*]. See De Jesús' Submission of 16 March 2020, ¶¶ 21-24.

⁴⁵ The Conoco Parties' Submission of 4 February 2020, ¶ 32. Transcripts, p. 44: 23-25, 45: 1-3.

⁴⁶ *Flughafen Zürich A.G. and Gestion e Ingeniera IDC S.A. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/19, Decision of the *ad hoc* Committee on Stay of Enforcement of the Award, 11 March 2016, ¶ 66 (A/CLA-7) [hereinafter *Flughafen*]. See also ICJ: Dispute Regarding Navigational and Related Rights, 2009, ¶ 150, n° A/RLA-23 and Pulp Mills on the River Uruguay, 2010, ¶ 278, n° A/RLA-24.

⁴⁷ *Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Decision on the Argentine Republic's Request for a Continued Stay of Enforcement of the Award, 7 October 2008, ¶ 47 (R-805).

42. Curtis stresses that it is virtually certain that the Award will be annulled.⁴⁸ If a bald assertion of the likelihood of success were adequate, a stay would be granted in every case. The Committee can only speculate at present about Curtis' remark. The Application for Annulment only identifies among the grounds of annulment listed at Article 52(1) of the Convention those that will serve as a basis for the action to set the Award aside. These are neither developed nor substantiated. As remarked by one *ad hoc* Committee,⁴⁹ an evaluation of the arguments in support of the application for annulment would throw the committee into an examination of the regularity or the soundness of the reasons of the impugned award, when the Committee's task in the present context is to evaluate the necessity for a measure pending the annulment proceedings. The Committee holds that the likelihood of Venezuela's success does not constitute a circumstance justifying the grant of a stay of execution.

2) The absence of prejudice caused to Conoco by deferring enforcement

43. The Conoco Parties describe Venezuela's policy, regardless of the US sanctions, as one not to comply with awards.⁵⁰ They rely on the declarations of the Venezuelan President and Ministry of Foreign Affairs after the country denounced the ICSID Convention on 25 January 2012, which, the Conoco Parties contend, far from being political declarations as insinuated by Venezuela,⁵¹ are binding as a matter of international law. The Respondents on annulment also point out to the case law of the Venezuelan Supreme Court following which ICSID Convention provisions inconsistent with the Constitution cannot be enforced.⁵²

44. The ICSID Convention pro-enforcement scheme depends on the compliance of all Contracting States. The possible contrariety of Venezuela's constitutional system, or possibly, governmental action, with Articles 53 and 54 of the ICSID Convention would question the State of Venezuela's compliance with its international obligations under the Convention, notwithstanding its withdrawal from the ICSID system in 2012 which has no retroactive effect pursuant to Article 72 of the Convention.⁵³ The duties of a State arising under Article 54 regarding its enforcement obligations are owed to all Contracting States and whether Venezuela has breached its obligations under the ICSID Convention falls to be decided by the International Court of Justice as provided by Article 64 of the ICSID Convention.

45. It remains that the Committee recognizes that the attitude of the debtor is one of the reasons that can give rise to legitimate fears of non-compliance that would weigh in favor of lifting the stay.⁵⁴ There has been a considerable amount of debate between the

⁴⁸ English Transcripts, pp. 31: 20-25, 32: 1-24.

⁴⁹ *Kardassopoulos*, ¶ 26 (A/CLA n° 10). Other Committees have ruled in a like manner that the strength of the case on annulment is without basis to support the continuation of the stay (see Ch. Schreuer and others, *The ICSID Convention, A Commentary*, Cambridge University Press, 2nd ed., 2010, p. 1072, n° 611).

⁵⁰ English Transcripts, pp. 51:11-25, 52, 53:1-5.

⁵¹ De Jesús' Submission of 16 March 2020, ¶ 41.

⁵² The Conoco Parties' Submission of 4 February 2020, ¶¶ 25, 26. See also the Conoco Parties' Letter of 14 April 2020, ¶ 11. De Jesús however contests the interpretation made by Conoco, De Jesús' Submission of 16 March 2020, ¶ 51.

⁵³ English Transcripts, p. 6: 12-21.

⁵⁴ *Tenaris S.A. and Talta E Marketing Sociedade Unipessoal LDA v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/12/23, Decision on Venezuela's Request for the Continued Stay of Enforcement of the Award, 23 February 2018, ¶ 128 (A/CLA-20) ([hereinafter *Tenaris 2*]; *Valores Mundiales, S.L. and Consorcio Andino S.L.*

Parties as to Venezuela's compliance with investment awards rendered against it. The Conoco Parties say they are "unaware of *any* example of Venezuela voluntarily complying with an award promptly and in full".⁵⁵ They declare that Venezuela seeks to leverage the complexity and costs of forced execution to avoid fulfilling its ICSID obligations, so that award creditors are forced to negotiate settlements in lieu of full and final payment as required by the ICSID Convention.⁵⁶ Venezuela denies any pattern of non-compliance as alleged by the Conoco Parties and cites various examples of cases in which, Venezuela avers, it "has successfully reached several high stake compensation agreements".⁵⁷

46. Non-compliance at a general level with regard to other awards is an element of appreciation,⁵⁸ but as remarked by the *ad hoc* Committee in *Flughafen*, it "*could not be speculated on Venezuela's incapacity of payment or its non-compliance with its international financial obligations or voluntary compliance with international awards*".⁵⁹ Because the Committee does not wish to speculate on the enforcement of the 8 March 2019 Award, it precisely asked the Parties about the steps taken regarding voluntary compliance with the Award.⁶⁰ The Conoco Parties indicate that they wrote to De Jesús on 11 March 2019 asking to remit payment of the Award.⁶¹ De Jesús replies that Venezuela has received no official communication as to the enforcement.⁶² It is possible to conclude from these exchanges that implementing a spontaneous enforcement of the Award was not a high priority between the Parties, as evidenced by the Conoco Parties' concomitant action for recognition of the Award before the US District Court of the District of Columbia, also on 11 March 2019.
47. The Committee inquired⁶³ on Venezuela's position that the Conoco Parties will not be prejudiced by the stay other than in respect of delay which is compensated by the payment of interest. In this immediate regard, one *ad hoc* Committee remarked that post-award interests compensate for the deprivation of the principal until payment of the award, but are not directly related to the issue of enforcement of the award.⁶⁴ Before we turn to the Parties' more substantive arguments, it is noteworthy that the absence of prejudice is not the starting point whether or not to grant a stay of execution as there is nothing in the ICSID Convention to normally deprive the award creditor of the fruits of its victory in the absence of good reasons. Otherwise, the ICSID Convention would have laid down the reverse rule that an action on annulment automatically activates

v. Bolivarian Republic of Venezuela, ICSID Case No. ARB/13/11, Decision on the Request for a Continuation of the Stay of Enforcement of the Award, 6 September 2018, ¶ 107 (A/CLA-21).

⁵⁵ The Conoco Parties' Submission of 4 February 2020, ¶ 29.

⁵⁶ English Transcripts, pp. 54-56.

⁵⁷ De Jesús' Submission of 16 March 2020, Jesús, ¶ 57; Letter of 15 April 2020; Transcripts, pp. 18: 19-25, 19: 1-12. English Transcripts, p. 28.

⁵⁸ *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25, Decision on Stay of Enforcement of the Award, 4 April 2016, ¶¶ 103-108 (A/CLA-14).

⁵⁹ *Flughafen*, ¶ 66 (A/CLA-7). [Tribunal's translation]

⁶⁰ "Have the Conoco Parties and Venezuela had any contact regarding the enforcement of the Award?" (Question n° 1 on 3 April 2020).

⁶¹ A/C-54. Transcripts, p. 57: 3-8.

⁶² De Jesús' letter of 15 April 2020, p. 1.

⁶³ "What would be the specific prejudice of deferring enforcement of the Award to a later date having regard to Venezuela's alleged refusal or inability to honour any award presently and to the freezing of its assets in the US?" (Question n° 3), 3 April 2020.

⁶⁴ *Kardassopoulos*, ¶ 43 (A/CLA-10). See also, *Tenaris I*, ¶ 91 (A/CLA-19).

suspension of enforcement.

48. Curtis points out that this case has been pending for almost thirteen years and, in any event, the annulment proceeding is likely to be resolved by 2021.⁶⁵ The Conoco Parties retort that Venezuela's position regarding the absence of harm because of delayed payment is "mystifying"⁶⁶ and that Venezuela's procedural attitude in the arbitration which lasted over eleven years has already postponed the reparation of the unlawful expropriation of Conoco's investment.⁶⁷ How long the debt has been outstanding is an element worthy of consideration for a stay and Curtis' remark that the Conoco Parties preferred to gamble on the arbitration to get a windfall rather than accept generous offers of compensation⁶⁸ is not an appropriate justification to further deferring the payment of claims which have been made thirteen years ago.
49. We now move to examine whether there are justifications for preventing the Conoco Parties from realizing their right to enforcement to its full extent by continuing the stay until a decision is made on annulment.
- 3) The amount of compensation ordered in the Award and Venezuela's economic situation
50. A stay will be refused where the execution of the award would not substantially prejudice the Applicant's interest. Venezuela argues here that lifting the stay of enforcement of the Award would run the risk of causing irreparable harm.⁶⁹ The Committee disagrees with the Conoco Parties which maintain that ICSID awards are enforceable immediately and not only in periods of economic prosperity or of corruption-free governments.⁷⁰ Quite to the contrary, the financial situation of the award debtor is a circumstance which may justify a stay if enforcement would manifestly have excessive consequences. Some *ad hoc* committees spoke in this regard of catastrophic immediate and irreversible consequences.⁷¹
51. Curtis alludes to the "punishing effect on Venezuela's economy and its people" of the enforcement of the Award, says that Venezuela's economy is in a crisis of historic proportions and points out that the Award represents 13,5% of the Venezuelan Gross Domestic Product (GDP) of 2019.⁷² De Jesús points out that Venezuela's estimated State budget for 2020 is approximately USD 5,4 billion and insists on the dire consequences of enforcement on the Venezuelan population and, that, given the magnitude of the amount of compensation ordered in favor of the Conoco Parties, immediate enforcement of the Award would require Venezuela to allocate from its GDP important resources which would be diverted from essential public services.⁷³

⁶⁵ Curtis' Submission of 16 March 2020, ¶ 19.

⁶⁶ English Transcripts, p. 59 :14.

⁶⁷ The Conoco Parties' Submission of 4 February 2020, ¶ 3.

⁶⁸ English Transcripts, pp. 34:18-25, 35: 1-4.

⁶⁹ Curtis' Submission of 16 March 2020, ¶ 23; De Jesús' Submission of 16 March 2020, ¶ 10, English Transcripts, pp. 22: 20-25, 23: 1-17.

⁷⁰ Transcripts, p. 64: 23-25.

⁷¹ *Maritime International Nominees Establishment v. Republic of Guinea*, ICSID Case No. ARB/84/4, Interim Order n° 1, 12 August 1988 ¶ 27 (R-795); *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Decision on the Argentine Republic's Request for a Continued Stay of Enforcement of the Award, 5 March 2009, ¶79 (cited by Schreuer, p. 1075, n° 624).

⁷² Curtis' Submission of 16 March 2020, ¶¶ 23, 25. English Transcripts, pp. 33: 24-25, 34: 1-10.

⁷³ De Jesús' Submission of 16 March 2020, ¶ 64; De Jesús letter of 15 April 2020, p. 10.

Venezuela's economic situation, even asserts De Jesús in reply to the Committee's question,⁷⁴ has been deliberately aggravated by illegitimate economic, financial and commercial sanctions inflicted by the United States.⁷⁵

52. We accept that the need to secure public resources “would be equally applicable to the fulfillment of the Award in case the Annulment were not accepted or even if the annulment had not been requested”.⁷⁶ Allowing payment would, according to Curtis, frustrate Venezuela's efforts to achieve the consensual restructuring of its external debts and precipitate “a chaotic run on Venezuela's assets”⁷⁷ as Venezuela has been moreover trying to achieve an overall settlement with the Conoco Parties within the framework of the agreed compensation mechanisms.⁷⁸ Not without pertinence, the Conoco Parties answer that they cannot be compared to holders of Venezuelan government bonds who, contrary to them, have accepted risks of non-payment when investing in Venezuela.⁷⁹ The question however is not, as the Conoco Parties aver, whether the Committee's mandate is too limited to occupy a policing function over sovereign restructuring which falls to governments and multilateral institutions to consider,⁸⁰ but that of Venezuela's resources to pay the Award on which the Committee inquired.⁸¹ We have now before us De Jesús' last argument alluding to the current COVID-19 public health crisis.⁸² Absent a demonstration that the worldwide sanitary crisis has worsened the perspectives of payment of the Award, we consider the argument as moot.
53. Curtis clearly admits at the Hearing that Venezuela could not hand over 8,5 billion USD to Conoco.⁸³ This state of affair is not linked to the immediate payment of the Award before a decision of annulment but to a permanent impossibility to pay for the Award, if not annulled. De Jesús contends that a stay would allow Venezuela to better organize its economy to comply with the Award, if not annulled.⁸⁴ No further elements were made in support of the later contention, so that it is apparent that the duration of these annulment proceedings would not allow Venezuela to collect specific funds for the satisfaction of the Award.
54. If we follow this line of argumentation on Venezuela's financial condition, the issue would be more about Venezuela's impossibility to pay the amounts of the Award than about a limited deferral of payment pending these proceedings. Venezuela has not proven that enforcement before a decision on annulment will cause more catastrophic consequences which did not already exist. The problem by far exceeds the question of

⁷⁴ “Can any non-compliance be directly linked to economic difficulties and/or the US sanctions? Is this relevant for purposes of the Committee's decision on whether to maintain or lift the stay of enforcement of the Award?” (Question n° 2 on 3 April 2020).

⁷⁵ De Jesús' Letter of 15 April 2020. See also, De Jesús' Submission of 16 March 2020, ¶ 66.

⁷⁶ *Flughafen*, ¶ 63 (A/CLA-7) (Translation comes from The Conoco Parties' Letter of 14 April 2020, footnote 47).

⁷⁷ Curtis' Submission of 16 March 2020, ¶¶ 25, 26 and Curtis' Letter of 14 April 2020, p. 4; A/C-31 (Guidelines for the Renegotiation of the Chavez/Maduro Era Legacy Public External Debt of 1 July 2019). See also De Jesús' letter of 15 April 2020, p. 10; A/R 37 (Press release on the Creation of the Presidential Commission on the Renegotiations on terms of Foreign Debt of the Republic and PVSDA of 3 November 2017).

⁷⁸ Curtis' Letter of 14 April 2020, p. 1.

⁷⁹ The Conoco Parties' Letter of 14 April 2020, ¶ 38.

⁸⁰ English Transcripts, pp. 62: 8-25, 63: 1.

⁸¹ “What would be the precise impact of the Award's enforcement on Venezuela's State budget? What efforts, if any, has Venezuela taken to restructure its debt and how can this have an effect on Venezuela's ability to pay awards rendered against it?” (Question n° 5 on 3 April 2020).

⁸² De Jesús' Letter of 15 April 2020, p. 9; English Transcripts, p. 22: 8-19.

⁸³ English Transcripts, pp. 33: 1-23.

⁸⁴ De Jesús' Submission of 16 March 2020, ¶ 75.

a continuation of the stay which the Committee has to resolve. The answer is not so much in the hands of the Committee, but in those of the competent enforcement court or authority mentioned at Article 54(3) of the ICSID Convention which may decide on a stay or adjustments of payment in circumstances permitted by the laws concerning the execution of judgements that would not be inconsistent with the ICSID Convention.

55. It is not the task of the Committee to review the continuation of the provisional stay in the abstract but to examine the specific issues raised in the case by an immediate enforcement of the Award for deciding, in its discretion, whether or not to continue with the stay.

4) The prospects of effective enforcement of the Award

56. Three days after the notification of the Award on 8 March 2019, the Conoco Parties initiated recognition proceedings in the US District Court of the District of Columbia, which have since been stayed in light of the provisional stay issued by the Secretary-General of ICSID in connection with the Applications for Annulment.⁸⁵ Besides, the Conoco Parties begun enforcement proceedings before the English High Court in May 2019 and the registration Order was later served on Venezuela in September 2019.⁸⁶

57. At the Hearing, Mr. Reinaldo Muñoz Pedroza formally declared that Venezuela will comply with all parts of the Award that would not be annulled by the Committee, but this statement was considered as not acceptable by the Respondents on Annulment because they could not credibly take at face value an undertaking to pay on the basis of an Award rejected by Venezuela and because the constitutional framework of Venezuela would not allow for enforcement.⁸⁷ On the later argument, the Committee above said that an alleged breach of its obligations by Venezuela regarding the enforcement scheme of the ICSID Convention was a matter to be decided in accordance with Article 64 of the Convention.

58. In this section, we are concerned with the possibility of an effective and immediate enforcement of the Award, should the stay be not continued. De Jesús submits that, since “the United States judiciary [sic] has stayed all cases submitted by the Republic’s creditors”, until a decision from the United States Supreme Court is rendered there will be no “elbowing” of award creditors in enforcement proceedings in the United States.⁸⁸ The Conoco Parties reply that this would be shorter than the expected duration of the annulment proceedings⁸⁹ and, finally, informed on 23 July 2020, that the court imposed stays in the US have now been lifted or expired on a number of actions brought by Venezuela’s award creditors. The Conoco Parties also informed on 23 July 2020 that OFAC has now granted them authorization to enforce the Award,⁹⁰ but declined

⁸⁵ Curtis’ Letter of 14 April 2020, p. 1. English Transcripts, p. 75: 2-10.

⁸⁶ “What enforcement actions (if any) did the Conoco Parties take after the Award was rendered until enforcement was stayed by the Secretary-General of ICSID upon registration of the Application for Annulment? What are the prospects of enforcing the Award outside the United States?” (Question n° 1 on 3 April 2020); the Conoco Parties’ Letter of 14 April 2020, n° 8 (Conoco); English Transcripts, p. 75: 11-14.

⁸⁷ English Transcripts, pp. 5:16-20; 72: 3-25; 73: 1-6.

⁸⁸ De Jesús Submission of 16 March 2020, ¶ 79.

⁸⁹ The Conoco Parties’ Letter of 14 April 2020, ¶ 28.

⁹⁰ “What steps have the Conoco Parties taken to obtain such license and what is the likelihood that they may be granted one soon? What effect, if any, can have such sanctions on the Conoco Parties’ ability to return any funds paid on the Award if annulled? Would the Conoco Parties be willing to give an undertaking that all amounts

Venezuela's invitation⁹¹ to provide such authorization,⁹² other than to the Committee *in camera* because of the sensitive information on the targets of their enforcement efforts.⁹³

59. The Parties are in strong disagreement about the existence (and scope) of the authorization.⁹⁴ Venezuela contends that the Conoco Parties cannot enforce the Award in the United States, even if the Committee were to lift the stay, because of the OFAC sanctions and regulations and points to the absence of evidence showing that the Conoco Parties have received or will be granted an OFAC license.⁹⁵ Curtis describes as "ludicrous" the delivery of a license by OFAC to enforce the Award against Venezuela's assets in the United States. Curtis stresses that, even if all the US sanctions were lifted, that would make stay even more important as it would not be appropriate to proceed with enforcement of the Award before conclusion of the annulment proceedings.⁹⁶
60. The Conoco Parties declare that the US sanctions regime itself is irrelevant to the Committee, but nonetheless recognize that the sanctions might affect from a practical standpoint, how and when the Award can be enforced.⁹⁷ True, the legitimacy of the US sanctions is not an issue to rule on for this Committee, but, as above stated, whether effective enforcement of the Award is permissible at present in the US, is of concern. Curtis refers to the possibility that any OFAC license granted to Conoco could only concern unblocked property outside of the United States.⁹⁸ The Conoco Parties have no update on the enforcement proceedings in the UK, otherwise, there are no other active enforcement proceedings in other jurisdictions.⁹⁹
61. There is uncertainty whether the Conoco Parties are prevented from enforcing the Award, whether in the US, or in the UK in the absence of any information that the Respondents on Annulment have authorization to attach property outside of the US, but there is a strong probability that they are prevented from repaying Venezuela if the Award is annulled. We also conclude that Venezuela is prevented from claiming back the money after annulment, should this be the outcome of these proceedings, and is also prevented from entering into any settlement agreement with the Conoco Parties, although we understand that settlement is not what the Respondents on Annulment are interested in at the moment.
62. Under circumstances where there are serious doubts about the practicality of enforcement of the Award, Venezuela has not established the concrete harm it would suffer from a refusal to continue the provisional stay of the Award in favor of which the ICSID Convention lays no presumption. If no demonstrated reasons exist that would justify postponing the right of the Conoco Parties to enforcement of the Award, that

recovered as a result of enforcement actions will be placed in escrow or with a trustee that is not subject to the sanctions for the duration of the annulment proceedings?" (Question 4 on 3 April 2020).

⁹¹ De Jesús and Curtis' letters of 3 August 2020; De Jesús' letter of 20 August 2020.

⁹² The Conoco Parties' Letter of 12 August 2020.

⁹³ English Transcripts, pp. 60: 20-25, 61, 62: 1-2.

⁹⁴ English Transcripts, pp. 39: 22-25, 40:1-23.

⁹⁵ US Executive Order 13884 of 5 August 2019. Curtis' Submission of 16 March 2020, ¶¶ 20-22. Curtis' Letter of 14 April 2020, p. 3. Transcripts, p. 35:19-25. De Jesús' Submission of 16 March 2020, ¶ 81. De Jesús' Letter of 15 April 2020, p. 9.

⁹⁶ Transcripts, pp. 41: 15-23, 76: 13-25.

⁹⁷ English the Conoco Parties' Letter of 14 April 2020, ¶ 16; letters of 23 July and 12 August 2020. English Transcripts, pp. 59:24-25, 60:1-7.

⁹⁸ English Transcripts, p. 76: 13-25.

⁹⁹ English Transcripts, p. 75: 11-22.

does not mean that the Conoco Parties should enjoy said right without limitations as we examine below.

63. The Conoco Parties allege that any delay in the payment significantly diminishes the likelihood of collection in the circumstances of outstanding and other pending awards against Venezuela,¹⁰⁰ however this general remark is rightly answered by Curtis that the OFAC sanctions will also apply to all the other creditors' actions against Venezuela in the United States.¹⁰¹ They now say that an additional stay when other creditors have now the possibility to continue their actions would put them further behind the line of creditors pursuing a limited pool of attachable assets.¹⁰² They further allude to their doomed prospects of enforcing the Award in the US because of the improper steps taken by Venezuela to render itself judgment proof in divesting its US based assets to Venezuela and Russia. We therefore trust the Conoco Parties to fully and promptly cooperate in the implementation of this Order.

5) The risks of non-recoupment of the award monies by Venezuela

64. Venezuela avers that the Conoco Parties are mere shell companies incorporated in the Netherlands which are in precarious financial position.¹⁰³ In reply to the Committee's question,¹⁰⁴ the Conoco Parties note that they are subsidiaries of ConocoPhillips, which is one of the world's largest oil exploration and production companies and say that, if they appear as shell companies, this is because their assets were totally and unlawfully expropriated by Venezuela.¹⁰⁵ Without entering into the debate on this last issue, the Committee's view is that the Applicant has not demonstrated that the alleged impecuniosity of the Conoco Parties would frustrate Venezuela's ability to recoup any payment made on the Award, if annulled.
65. The risks of non-recoupment assume in the first place that enforcement of the Award is practicable. In light of the difficulties of opening an escrow account in relation to funds with a Venezuelan source, the Conoco Parties have offered to earmark funds received during the pendency of the annulment proceedings or to consider other similar protective measures, including an undertaking from their mother company.¹⁰⁶ De Jesús however observes that the Conoco Parties remain silent regarding an authorization from OFAC to place any amounts recovered into a segregated account to repay any funds if the Award is annulled.¹⁰⁷ As De Jesús remarks, the Respondents on annulment are wholly-owned by companies registered in the USA, and the US sanctions program risks Venezuela's ability to recoup any payment made on the Award if it is annulled, the Conoco Parties admit that return of the funds could only be effectuated consistent with their obligations at the time, including under the US sanctions regime.¹⁰⁸

¹⁰⁰ The Conoco Parties' Submission of 4 February 2020, ¶ 45.

¹⁰¹ Curtis' Letter of 14 April 2020, p. 3. See also, Transcripts, pp. 36: 16-25, 37-39: 1-12. "Are there other creditors that enjoy priority of payment over the Conoco Parties?" (Question n° 3 on 3 April 2020).

¹⁰² The Conoco Parties' Submission of 4 February 2020, ¶¶ 33-41. The Conoco Parties' Letter of 23 July 2020, p. 1.

¹⁰³ De Jesús' Submission of 16 March 2020, ¶¶ 70-73; Curtis' Letter of 14 April 2020, p. 5.

¹⁰⁴ "What is the financial situation of the Conoco Parties at present? How does the outcome of this proceeding affect the Conoco Parties' accounts?" (Question n° 6 on 3 April 2020).

¹⁰⁵ The Conoco Parties' Letter of 14 April 2020, ¶¶ 41, 42.

¹⁰⁶ The Conoco Parties' Letter of 14 April 2020, ¶¶ 31, 32.

¹⁰⁷ English Transcripts, pp. 77: 15-25, 78: 1-6.

¹⁰⁸ De Jesús' Submission of 16 March 2020, Jesús ¶ 74; The Conoco Parties' Letter of 14 April 2020 ¶ 32.

66. The Committee agrees that this raises serious concerns about the Conoco Parties' ability to return any funds paid on the Award, if annulled. The Committee wishes to be fully appraised therefore about the status of the Respondents on Annulment's application to OFAC for "*authorization to place any amounts recovered into a segregated account and to repay any funds paid on the Award if annulled*"¹⁰⁹ and about the undertaking of ConocoPhillips for its Dutch subsidiaries, the Conoco Parties. In case such authorization has been granted for the funds collected in the US, the Committee holds that the Conoco Parties will provide the document under the conditions set forth in the dispositive section of this Order. For the funds that may be collected outside of the US, the Committee directs the Conoco Parties to indicate the conditions for opening one or more segregated accounts in this regard. The Conoco Parties are further invited to provide a guarantee from ConocoPhillips that they will return to Venezuela any funds paid under the Award.

IV. Decision

67. The Committee decides to discontinue the stay once it has been satisfied that all assurances have been given by the Conoco Parties that, should enforcement of the Award be possible under the OFAC sanctions regime, it can return any money collected under the Award to Venezuela in case of annulment. In fulfilment of this objective, the Committee requests that the Conoco Parties provide:

- 1) the authorization from OFAC to pay any amounts recovered into a segregated account and to repay any funds paid on the Award if annulled, and
- 2) the conditions for opening one or more segregated accounts for the funds collected outside of the US, and
- 3) a guarantee from ConocoPhillips that it will return to Venezuela any funds paid under the Award.

68. The Committee accepts that the authorizations from OFAC be submitted in redacted form.

69. All questions concerning the costs and expenses of the Committee and of the Parties in connection with this application are reserved for subsequent determination, together with the Application for Annulment.

¹⁰⁹ The Conoco Parties' Letter of 14 April 2020, ¶ 30.

[signed]

Professor Diego Fernández Arroyo
Member of the *ad hoc* Committee

[signed]

Mr. Kap-You (Kevin) Kim
Member of the *ad hoc* Committee

[signed]

Judge Dominique Hascher
President of the *ad hoc* Committee