

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

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

Claimants / Respondents on Annulment

v.

Bolivarian Republic of Venezuela

Respondent / Applicant

(ICSID Case No. ARB/07/30)

Annulment Proceeding

PROCEDURAL ORDER NO. 1

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

28 August 2020

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Introduction

On 20 February 2020, the Secretary of the Committee circulated a draft procedural order to the parties in preparation for the first session and the preliminary procedural consultation referred to in Arbitration Rules 13 and 20, respectively.

In its message of 25 February 2020, the Committee advised the parties that the first session and the preliminary procedural consultation would be held with the parties by telephone conference on 25 March 2020.

On 19 March 2020, the Secretary of the Committee informed the parties that in view of the parties' availability, the Committee had decided to separate the first session from the preliminary procedural consultation and that it would hold the first session on 25 March 2020, only among its Members. The consultation on procedural matters would proceed in writing; however, the parties would have the opportunity to present their views in an oral hearing scheduled for 17 April 2020.

On 25 March 2020, the Members of the Committee held the first session without the presence of the parties. The Committee considered the comments on the Committee's draft submitted by the parties and decided that, until Procedural Order No. 1 was issued, the parties should observe the provisions with respect to which no comments were made (to wit: items 1, 2, 3, 5.1, 5.3, 5.4, 5.5, 5.6, 6, 7, 8.2, 9.1, 9.3, 10.2, 10.3, 12, 13.4, 13.5, 13.6, 13.8, 13.9, 17.1, 17.2, 17.4, 18.1, 18.2, and 19).

In its instructions of 3 April 2020, the Committee requested short written submissions regarding the parties' positions on the issues with respect to which no agreement was reached. The parties did so on 10 April 2020.

On 16 April 2020, the proceeding was suspended as a result of the filing of a proposal to disqualify the three Members of the Committee submitted by Dr. Alfredo De Jesús O. on behalf of the Bolivarian Republic of Venezuela.

On 10 August 2020, following the dismissal of the disqualification proposal by the Chairman of the Administrative Council and the continuation of the proceedings, the Committee circulated an annotated draft setting out the edits proposed by the parties to the Committee's draft and their explanations. The Committee invited the parties to indicate whether they had any changes or updates to make. It also indicated that, subject to the parties' responses, the Committee could decide to issue Procedural Order No. 1 based on the parties' written submissions except for section 8 below on the parties' representation in this proceeding.

On 14 August 2020, the parties replied to the Committee's invitation. A few additional proposals were made, mainly in connection with the procedural calendar.

Order

Pursuant to ICSID Arbitration Rules 19, 20 and 53, this first Procedural Order sets out the Procedural Rules that the parties have agreed, and the Committee has determined that shall govern this annulment proceeding. The procedural timetable is attached as Annex A.

1. Applicable Arbitration Rules

Convention Article 44 and Arbitration Rule 53

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 10 April 2006. In accordance with Arbitration Rule 53, the Arbitration Rules apply, *mutatis mutandis*, to annulment proceedings.

2. Constitution of the Committee and the Committee Members' Declarations

Convention Article 52(3); Arbitration Rules 6 and 52

2.1. The Committee was constituted on 3 February 2020, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Committee was properly constituted and that no party has any objection to the appointment of any Member of the Committee.

2.2. The Members of the Committee timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on 3 February 2020.

2.3. The Members of the Committee confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

3. Fees and Expenses of the Committee Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

3.1. The fees and expenses of each Member of the Committee shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

3.2. Under the current Schedule of Fees, each Member of the Committee receives:

- (i) US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and

- (ii) subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Member of the Committee shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred by the Members of the Committee in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
- 4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)
 - 4.1. The presence of two Members of the Committee constitutes a quorum for its sittings, including by any appropriate means of communication.
- 5. Rulings of the Committee
Convention Article 48(1); Arbitration Rules 16, 19 and 20
 - 5.1. All rulings of the Committee, i.e., procedural orders and decisions, shall be taken by a majority of the Members of the Committee.
 - 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Committee.
 - 5.3. The Committee will draft all rulings, including its final decision, within a reasonable time period. If a ruling has not been issued within three to six months after the final submission on a particular matter, the Committee will provide the parties with status updates at appropriate intervals.
 - 5.4. The President is authorized to issue Procedural Orders on behalf of the Committee.
 - 5.5. Procedural ruling shall be made after the parties have been afforded an adequate opportunity to present their views in relation thereto.
 - 5.6. The Committee's rulings on procedural matters may be communicated to the parties by the Secretary of the Committee in the form of a letter or email.

6. Power to Fix Time Limits
Arbitration Rule 26(1)

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Committee. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Committee.

7. Secretary of the Committee
Administrative and Financial Regulation 25

- 7.1. The Secretary of the Committee is Mr. Francisco Grob, Legal Counsel, ICSID, or such other person as ICSID may notify the Committee and the parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Mr. Francisco Grob
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 458-5072
Fax: + 1 (202) 522-2615
Email: fgrob@worldbank.org
Paralegal email: ifernandez1@worldbank.org

- 7.3. For local messenger deliveries, the contact details are:

Mr. Francisco Grob
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
USA
Tel. 202-458-1534

8. Representation of the Parties
Arbitration Rule 18

- 8.1. Each party shall be represented by its respective counsel and may designate additional agents, counsel, or advocates by notifying the Secretary of the Committee promptly of such designation.
- 8.2. The Bolivarian Republic of Venezuela will be designated as the Applicant and ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. will be designated as the Respondents on Annulment.

9. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 9.1. In accordance with Administrative and Financial Regulation 14(3)(e), the Applicant shall be solely responsible for making the advance payments requested by the ICSID Secretariat to cover the costs of the proceeding. This is without prejudice to the Committee's final decision as to the allocation of costs.
- 9.2. By communication of 4 February 2020, the Centre requested the Applicant to make an advance payment of US\$350,000, to cover the initial costs of the proceeding. The Centre received the Applicant's payment on 5 March 2020.
- 9.3. ICSID shall request the Applicant further advances as needed. Such requests shall be accompanied by a detailed interim statement of account. The final financial statement will include a breakdown of each member of the Committee's fees and expenses.

10. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

- 10.1. The place of the proceedings will be decided before each session by the Committee after consultation with the parties.
- 10.2. The Committee may hold hearings at any other place that it considers appropriate if the parties so agree. Hearings may also be held by virtual means.
- 10.3. The Committee may deliberate at any place it considers convenient.

11. Procedural Languages, Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rule 20(1)(b) and 22

11.1. English and Spanish are the procedural languages of the annulment proceeding.

11.2. Routine, administrative, or procedural correspondence sent by the ICSID Secretariat may be in either procedural language.

[For Parties' Pleadings]

11.3. Written requests and applications may be submitted by the parties in either procedural language. However, if the request or application is submitted in Spanish, a translation into English shall be filed within 10 business days.

11.4. The parties' pleadings referred to in §13 below may be submitted in either procedural language, provided that if not in English, a translation into English is filed within 15 business days.

11.5. Accompanying documentation in English need not be translated into Spanish. Accompanying documentation in Spanish or in any other language must be translated into English.

11.6. Notwithstanding §11.5, if the document is lengthy and relevant only in part, it is sufficient if only the relevant parts are translated.

11.7. The Committee may require that a party translate any document in whole or in part.

11.8. Translations need not be certified unless there is a dispute as to the translation provided and the party disputing the translation specifically requests a certified version.

[For Hearing]

11.9. Simultaneous interpretation from and into English and Spanish will be available at all times during the hearing.

11.10. The parties will notify the Committee, as soon as possible, and no later than at the pre-hearing organizational meeting (see §16 below), if a witness or expert requires interpretation.

11.11. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Committee as to which party shall ultimately bear those costs.

[For Committee's Documents Except the Decision on Annulment]

11.12. The Committee may initially make any order or decision in English and subsequently issue that order or decision in Spanish. Both language versions shall be equally language

[For Committee's Decision on Annulment]

11.13. The Committee shall render the Decision on Annulment in English and Spanish simultaneously. Both language versions shall be equally authentic.

12. Routing of Communications

Administrative and Financial Regulation 24

12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Committee.

12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Committee Secretary, who shall send them to the Committee.

12.3. Electronic versions of communications ordered by the Committee to be filed simultaneously shall be transmitted to the Committee Secretary only, who shall send them to the opposing party and the Committee.

12.4. The Committee Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Committee.

13. Number of Copies and Method of Filing of Parties' Pleadings and Translations

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d), 23 and 53

13.1. By the relevant filing date, the parties shall submit by email to the Committee Secretary and the opposing party an electronic version of the pleading.¹

13.2. Three business days following the electronic filing, the parties shall upload the pleading with all the supporting documentation and the corresponding updated index to the file sharing platform that will be created by ICSID for purposes of this case.

13.3. Also three business days following the electronic filing, the parties shall courier to the opposing party and to each Member of the Committee at the addresses indicated at §13.4 below:

13.3.1. For Judge Hascher, one (1) bound hard copy in A5 format (binder so as to

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

take out the documents, no spiral) of the entire submission, including the pleading together with any supporting documentation (including legal authorities in English) and the updated index;²

13.3.2. For Professor Fernández Arroyo, one hard copy in A4 format of the submission and the updated index; and

13.3.3. For Mr. Kim, one hard copy in A5 format of the submission and the updated index; and

13.3.4. At least one USB drive (Mac compatible), with a full copy of the entire submission, including the pleading and supporting documentation and an updated hyperlinked index of all the supporting documentation.

13.4. The addresses of the Committee Members are as follows:

Judge Dominique Hascher 10 Rue du Général Bertrand Paris 75007 France	Professor Diego Fernández Arroyo 4 rue Rollin 75005 Paris France (door code 29A92)	Mr. Kap-You (Kevin) Kim 511 Yeongdong-daero #1704 Trade Tower Seoul 06164 South Korea
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13.5. Subject to §13.3.1, legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Committee.

13.6. Electronic versions of submissions shall be text searchable (i.e., OCR PDF or Word).

13.7. Pleadings shall be accompanied by an updated index hyperlinked to the supporting documentation. The index shall indicate the document number, the pleading with which it was submitted and the language of the document.

13.8. At the conclusion of the written phase of the proceeding, on a date to be determined by the Committee, or at any other time the Committee or the Secretariat so requests, the parties shall courier to the ICSID Secretariat and each Member of the Committee a USB drive (Mac compatible) containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Committee decisions and orders to date) with a consolidated hyperlinked index of all documents.

13.9. The official date of receipt of a pleading or communication shall be the day on which the electronic version is submitted to the Secretary of the Committee.

² The hard copy set shall be organized including the original language document, followed by the translation separated by a colored sheet.

- 13.10. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.
14. Number and Sequence of Pleadings
Arbitration Rules 20(1)(c), 29, 31 and 53
- 14.1. See the timetable attached as Annex A
15. Evidence: Supporting Documentation
Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24
- 15.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 15.2. Given the nature of an annulment proceeding, the Committee expects that the parties will primarily refer to the evidentiary record of the arbitration proceeding and it does not expect to receive new witness statements or expert reports. This section shall not apply to new documentary evidence filed by the parties with their submissions on the issue of the stay of enforcement of the Award.
- 15.3. In principle, no new evidence shall be admitted in this proceeding. Should either party wish to introduce new documents or other evidence, other than legal authorities or expert reports, that party shall file a request to the Committee to that effect. The Committee will promptly decide on the admissibility of these new documents and/or evidence, after hearing from the other party.
- 15.4. Any documents introduced as exhibits or legal authorities in this annulment proceeding shall be labelled with numbers, and shall be organized in a clear order:
- 15.4.1. Exhibits and legal authorities already included in the evidentiary record of the arbitration proceeding shall be labelled and referred to using the same numbering as in the arbitration proceeding.
- 15.4.2. Each exhibit or legal authority shall have a divider with the exhibit identification number on the tab.
- 15.4.3. Exhibits (related to and submitted with briefs concerning the issue of the stay of enforcement) and legal authorities introduced for the first time in this arbitration in the annulment proceedings shall be numbered sequentially, starting as follows:
- 15.4.3.1 For the factual exhibits submitted by the Claimants /

- Respondents on Annulment: A/C-001;
- 15.4.3.2 For the legal authorities submitted by the Claimants / Respondents on Annulment: A/CLA-001;
- 15.4.3.3 For the Bolivarian Republic of Venezuela's factual exhibits: A/R-001;
- 15.4.3.4 For the Bolivarian Republic of Venezuela's legal authorities: A/RLA-001.

15.4.4. Each party shall number the accompanying documentation consecutively throughout the entire annulment proceeding and shall number the paragraphs of each of its written pleadings.

15.4.5. Duly certified copies of documents are not required unless the authenticity of the copy is contested and the Committee deems the certification necessary.

15.5. The parties shall include all of the evidence on which they intend to rely, including documents, legal authorities, written witness statements, expert opinions or reports, and other evidence in whatever form, with their written submissions.

15.6. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Committee Members, the Secretary, the court reporter(s) and interpreter(s) at the hearing in advance of their use.

16. Pre-Hearing Organizational Meetings
Arbitration Rule 13

16.1. A pre-hearing organizational meeting shall be held on a date determined by the Committee after consultation with the parties by telephone between the Committee, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

17. Hearings
Arbitration Rules 20(1)(e), 32 and 53

17.1. The oral procedure shall consist of oral arguments.

17.2. The hearing shall be held at a place to be determined in accordance with §10 above.

17.3. The date of the hearing shall be determined at a later stage.

17.4. The Members of the Committee shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.

18. Records of Hearings and Sessions
Arbitration Rules 13 20(1)(g) and 53

18.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Committee Members.

18.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Committee, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Committee on a same-day basis.

18.3. The parties shall agree on any corrections to the transcripts within-30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the parties in the transcripts (“revised transcripts”). The Committee shall decide upon any disagreement between the parties and any correction adopted by the Committee shall be entered by the court reporter in the revised transcripts.

19. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)

19.1. Issues related to post-hearing briefs and statements of costs shall be discussed at the close of the respective oral hearing.

20. Publication
Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rules 48(4) and 53

20.1. The parties consent to ICSID publication of the decision on annulment and any order or decision issued in the present proceeding.

21. Stay of Enforcement
Convention Article 48(5), Arbitration Rule 54

21.1. The stay-of-enforcement issue shall be heard at the hearing scheduled for 30 September 2020. As informed to the parties on 18 February 2020, the stay is continued until the Committee issues its decision.

22. Other Matters

22.1. All provisions of this Order (except item 8.1) come into force at the date of signature below

[signed]

Judge Dominique Hascher
President of the Committee

Annex A – Procedural Calendar

Procedural Step	By	Date
First Session	All	25 March 2020
Hearing on Stay of Enforcement of the Award	All	30 September 2020
Decision on Stay of Enforcement of the Award	Committee	TBD
Memorial on Annulment	Applicant	90 days from the date of Procedural Order No. 1
Counter-Memorial on Annulment	Respondent on Annulment	90 days from the filing of the Memorial on Annulment
Reply on Annulment	Applicant	75 days from the filing of the Counter-Memorial on Annulment
Rejoinder on Annulment	Respondent on Annulment	75 days from the filing of the Reply on Annulment
Pre-Hearing Organizational Meeting	All	TBD
Hearing on Annulment	All	TBD
Post-Hearing Submissions	Both Parties	TBD
Costs Submissions	Both Parties	TBD