



Procuración del Tesoro de la Nación

BUENOS AIRES, 14 ENE 2009

SEÑORA SECRETARIA:

Me dirijo a usted y a los miembros del Comité ad hoc en el arbitraje caratulado *Compañía de Aguas del Aconquija y Vivendi Universal S.A. c. República Argentina (Caso CIA-DI N° ARB/97/3) - Procedimiento de Anulación*, con relación a la nota de las Demandantes del 9 de Enero de 2009.

En su nota, las Demandantes manifiestan *inter alia* que Argentina incluyó en su nota del 30 de diciembre de 2008 "la repetición de una falsa cita del abogado José Martínez de Hoz que ya ha sido públicamente retractada por la publicación *-Latin Lawyer-* de la cual la Demandada obtuvo esa afirmación"¹. Esta es una seria acusación contra un Estado soberano. Es también una acusación infundada, hecha con extrema de mala fe.

En su nota del 9 de noviembre de 2008, Argentina incluyó la cita de Martínez de Hoz, donde él sostuvo con referencia a los procedimientos de pago de laudos, lo siguiente: "Considero que nadie cree que un estado va a enviar un cheque al día siguiente, los estados tienen presupuestos, etc. Considero que el sistema puede ciertamente vivir con eso y no creo que ningún inversor se quejaría de ello. En efecto, el sistema no se vería afectado si el procedimiento burocrático se extiende por 6 meses o hasta un año"². Al final de la cita se incluyó la siguiente nota al pie:

Ver *Latin Lawyer Magazine*, Volumen 7, N° 9, p. 12-14 (Anexo IV). Las palabras de Martínez de Hoz fueron editadas por la revista a los fines de su publicación. Un mensaje de correo electrónico de Clare Bolton, editora de *Latinlawyer*, con las palabras exactas de Martínez de Hoz durante la mesa redonda tal como aquí se transcriben y los

¹ Nota de las Demandantes del 5 de Enero de 2009, pág. 2

² Nota de Argentina del 28 de noviembre de 2008, pág. 9

motivos de su edición, se encuentra archivado en la Oficina del Procurador del Tesoro. Podemos ponerlo a disposición del Comité ad hoc, si así lo desea³.

Al formular su grave acusación, las Demandantes no se refieren a esta aclaración. Tampoco exigieron a Argentina la presentación del correo electrónico de Clare Bolton, editora de *Latin Lawyer*, en el caso de que tuvieran sinceras dudas sobre la exactitud de la cita de Argentina.

Para beneficio del Comité ad hoc, adjuntamos a la presente el intercambio de correos electrónicos entre Clare Bolton y el consejero de Argentina⁴. Del correo electrónico de Clare Bolton del 12 de noviembre de 2008, surge con claridad que Argentina incluyó en su nota del 28 de noviembre de 2008 una cita exacta de lo que Martínez de Hoz realmente dijo, la cual fue corregida por el editor para transmitir "lo sustancial de su punto"⁵.

Respecto a la "Aclaración" de *Global Arbitration Review*, "publicación hermana" de *Latin Lawyer*, acompañada a la nota de las Demandantes del 5 de enero de 2009, esperamos que esa publicación publique a la brevedad una nueva aclaración reflejando el contenido del correo electrónico que se adjunta a la presente nota. La República Argentina se reserva todos los derechos y acciones conforme el derecho aplicable si *Global Arbitration Review* no publica esa aclaración.⁶

En cualquier caso, lo efectivamente publicado por *Latin Lawyer*, incluye el contenido substancial del argumento de Argentina, en tanto Martínez de Hoz es citado diciendo que " si Ar-

³ Id., nota al pie 17.

⁴ Intercambio de correos electrónicos entre Clare Bolton y Gabriel Bottini, Anexo I.

⁵ Ver id.

⁶ Se destaca que la "Aclaración" de *Global Arbitration Review* no expresa que Martínez de Hoz no dijo que lo citado por Argentina - lo cual fue grabado por Clare Bolton - pero que "el texto como fue citado no aparece en la transcripción publicada, no fue verificada por Martínez de Hoz, y no es una cita correcta de *Latin Lawyer*. "Ver publicación adjuntada por las Demandantes en su nota del 5 de enero de 2009".



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gentina recurre a los procedimientos burocráticos que ustedes describieron, aún si ellos tomaran de 6 meses a un año, nosotros probablemente no estaríamos teniendo esta discusión⁷. Con la cita, Argentina estaba simplemente tratando de mostrar que aun los abogados que representan a los inversores encuentran aceptable que el proceso de pago tome de "seis meses a un año".

Esa es la importante cuestión a la que las notas de las Demandantes no se refieren. De hecho, las Demandantes no han podido identificar una sola instancia de cumplimiento de un laudo CIADI que demuestre que el plazo de 30 días es razonable o siquiera factible.

Por el contrario, Argentina ha hecho referencia a la práctica de diferentes Estados en el cumplimiento de laudos arbitrales internacionales. Argentina espera que el Comité *ad hoc* reconsidere su decisión y requiera de Argentina un compromiso de ⁶⁶ cumplir el laudo conforme con los precedentes internacionales.

Respetuosamente presentado.

NOTA SPTN N° 016 /AI/09



ADOLFO GUSTAVO SCRINZI
Subprocurador del Tesoro de la Nación

cc. Robert ZOELLICK, Presidente del Consejo Administrativo del
CIADI
Editores de Global Arbitration Review

SEÑORA SECRETARIA DEL COMITÉ AD HOC
DEL CENTRO INTERNACIONAL DE ARREGLO DE
DIFERENCIAS RELATIVAS A INVERSIONES
Claudia FRUTOS-PETERSON
S. / D.

⁷ Ver nota de Argentina del 28 de noviembre de 2008, Anexo IV, 17.

*Procuración del Tesoro de la Nación*

BUENOS AIRES, 14 ENE 2009

Dear Ms. Frutos-Peterson:

I am addressing you and the members of the *ad hoc* Committee in the arbitration captioned *Compañía de Aguas del Aconquija and Vivendi Universal S.A. v. Argentine Republic* (ICSID Case No. ARB/97/3) - Annulment Proceeding, in relation to Claimants' January 5, 2009 letter.

In their letter, Claimants state *inter alia* that Argentina included in its December 30, 2008 letter "the repetition of a false quotation of attorney José Martínez de Hoz that has already been publicly retracted by the publication - *Latin Lawyer* - from which Respondent obtained the statement."¹ This is a very serious accusation against a sovereign country. It is also an unfounded one, advanced with utmost bad faith.

In its November 28, 2008 letter Argentina included the quotation of Martínez de Hoz where he stated, in reference to payment proceedings, the following: "I think no one believes a state will send off a cheque the following day, they have budgets, etc. I think the system can certainly live with that and I don't think any investor would complain about that. It would certainly not affect the system if the bureaucratic proceeding takes 6 months or even a year."² At the end of the quote, the following footnote was included:

See *Latin Lawyer Magazine*, Volume 7, Issue 9 at 12-19 (Annex IV). Martínez de Hoz's words were edited by the magazine for purposes of publication. An email from Clare Bolton, editor of *Latinlawyer*, with Martínez de Hoz's exact words during the roundtable as transcribed herein and the reasons for the edition is on file with this Attorney General's Office. We can provide it to the *ad hoc* Committee if it so desires.³

¹ Claimants' January 5, 2009 letter at page 2.

² Argentina's November 28, 2008 letter at page 9.

³ *Id.*, footnote 17.

In making their bold accusation, Claimants do not refer to this clarification. Nor did they ever require Argentina to present the email from Clare Bolton, editor of *Latin Lawyer*, in the case they had sincere doubts as to the accuracy of Argentina's quotation.

For the benefit of the *ad hoc* Committee, we attach hereto the exchange of emails between Clare Bolton and counsel for Argentina.⁴ From Clare Bolton's November 12, 2008 email it is clear that what Argentina included in its November 28, 2008 letter was an exact quotation of what Martínez de Hoz actually said, which was amended by the editor to give "the flavour of his point".⁵

As to the "Clarification" by *Global Arbitration Review*, *Latin Lawyer's* "sister publication", attached to Claimants' January 5, 2009 letter, we expect that such publication will shortly publish a new clarification reflecting the content of the email attached to the present letter. The Argentine Republic reserves all its rights and actions under applicable law should *Global Arbitration Review* not publish such clarification.⁶

In any event, what *Latin Lawyer* actually published still contains the substance of Argentina's argument, in that Martínez de Hoz is quoted as saying that "[i]f Argentina just resorted to the bureaucratic processes you described, even if they took six months to a year, we probably wouldn't be having this discussion."⁷ With the quotation, Argentina was simply trying to show that even lawyers representing investors found it acceptable that the payment process would take "six months to a year".

⁴ Exchange of emails between Clare Bolton and Gabriel Bottini, Annex I.

⁵ See *id.*

⁶ We note that in its "Clarification" *Global Arbitration Review* does not state that Martínez de Hoz did not say what Argentina quoted—which was recorded by Clare Bolton—but that "the text as quoted did not appear in the published transcript, was not verified by Martínez de Hoz, and is not a correct quote from *Latin Lawyer*." See publication annexed to Claimants' January 5, 2009 letter.

⁷ See Argentina's November 28, 2008 letter, Annex IV at 17.



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That is the important issue which Claimants letters do not address. Indeed, Claimants have failed to identify a single instance of compliance with an ICSID award that would make the 30-day term reasonable or even feasible.

Conversely, Argentina has referred to the practice of different States as to compliance with international arbitral awards. Argentina expects that the *ad hoc* Committee will reconsider its decision on the stay of the award and will require from Argentina a commitment as to compliance with the award that ^{OB} is in line with international precedents.

Respectfully submitted,

[SIGNATURE]

ADOLFO GUSTAVO SCRINZI
TREASURY ATTORNEY GENERAL

NOTE SPTN No. 016 /AI/09

cc. Robert ZOELLICK, President of ICSID's Administrative Council
Editors of *Global Arbitration Review*

SECRETARY OF THE AD HOC COMMITTEE OF THE
INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES
Claudia FRUTOS-PETERSON

Gabriel Bottini

De: <internacionales@nextel.ar.blackberry.com>
Para: <gbottini@ptn.gov.ar>
Enviado: Miércoles, 12 de Noviembre de 2008 02:30 p.m.
Asunto: RV: Transcript of Argentina roundtable

Correo enviado desde una BlackBerry® de Nextel

From: Clare Bolton <clare.bolton@latinlawyer.com>
Date: Wed, 12 Nov 2008 11:19:54 +0000
To: 'Gabriel Bottini' <gbottini@ptn.gov.ar>
Subject: RE: Transcript of Argentina roundtable

Hi Gabriel,

These tiny changes are of course fine, thanks for taking the time to review.

Regarding Jose's comment, in the paragraph which ended up like this in the final version:

Martinez de Hoz: If Argentina just resorted to the bureaucratic processes you described, we probably wouldn't be having this discussion. When there is a domestic judgment against the state, it can voluntarily comply, which will lead to the bureaucratic procedure but it doesn't necessarily mean you have to appoint a court. Saying that the state appoints a court for purposes of article 54 complicates the issue.

Also had this point in it originally, which is what I think you must be referring to:

I think no one believes a state will send off a cheque the following day, they have budgets etc. I think the system can certainly live with that and I don't think any investor would complain about that. It would certainly not affect the system if the bureaucratic proceeding takes 6 months or even a year. But at least that would give the sense that the system is not at stake.

I think what he is saying there is that it would be OK if a bureaucratic proceeding took 6 months, but the very fact of referring it to a court questions the system and the process itself. I've amended it to the below, which I think, and I hope you agree, gives the flavour of his point.

Martinez de Hoz: If Argentina just resorted to the bureaucratic processes you described, even if they took six months to a year, we probably wouldn't be having this discussion. When there is a domestic judgment against the state, it can voluntarily comply, which will lead to the bureaucratic procedure but it doesn't necessarily mean you have to appoint a court. Saying that the state appoints a court for purposes of article 54 complicates the issue.

With kind regards, and thanks again,
Clare

From: Gabriel Bottini [mailto:gbottini@ptn.gov.ar]
Sent: 11 November 2008 22:09
To: Clare Bolton
Subject: Re: Transcript of Argentina roundtable

Dear Clare, please find attached the transcript with very few changes in redline. I also recall Martinez de Hoz saying something like that if the process of enforcement takes around 6 months that would be ok and I do not see it now. Did he say that?

Kind regards,
Gabriel

| --- Original Message ---

From: Clare Bolton
To: 'Gabriel Bottini'
Sent: Monday, November 10, 2008 1:12 PM
Subject: RE: Transcript of Argentina roundtable

That would be great, thanks.

From: Gabriel Bottini [mailto:gbottini@ptn.gov.ar]
Sent: 10 November 2008 14:59
To: Clare Bolton
Subject: Re: Transcript of Argentina roundtable

Sorry for not responding, I am now in the middle of a deadline but will revise it tomorrow.
Regards,
Gabriel

----- Original Message -----

From: Clare Bolton
To: 'Gabriel Bottini'
Sent: Monday, November 10, 2008 12:38 PM
Subject: RE: Transcript of Argentina roundtable

Hi Gabriel,

I've arranged with the printers that we will have one last opportunity to amend the text of the article on Wednesday morning at 10am London time. I'm so sorry to have to be so firm but if I do not have your comments back by close of business your time tomorrow the magazine will have the words as in the transcript I sent.

Thanks
Clare

From: Gabriel Bottini [mailto:gbottini@ptn.gov.ar]
Sent: 06 November 2008 21:39
To: Clare Bolton
Subject: Re: Transcript of Argentina roundtable

Thanks Clare, will respond tomorrow midday at the latest.

----- Original Message -----

From: Clare Bolton
To: 'gbottini@ptn.gov.ar'
Sent: Thursday, November 06, 2008 3:40 PM
Subject: RE: Transcript of Argentina roundtable

Dear Gabriel,

Just a quick reminder of this, as we do need to go to the printers tomorrow (end of, London time) and after that there is very limited scope to make changes. I have reattached the transcript for convenience.

Apologies for having to push,
Clare

From: Clare Bolton
Sent: 03 November 2008 17:16
To: 'nigel.blackaby@freshfields.com'; 'sylvia.noury@freshfields.com'; 'Stevens, Margrete'; 'Paolo.DiRosa@aporter.com'; 'Baker, C. Mark'; 'Ignacio.SuarezAnzorena@CliffordChance.com'; 'Guido Tawil'; 'gbottini@ptn.gov.ar'; 'fa@marval.com.ar'; 'MARTINEZ DE HOZ, José'

Subject: Transcript of Argentina roundtable

Dear all,

Thanks again for taking the time to participate in our roundtable in Buenos Aires recently. Please find attached the proposed transcript for publication.

This is your opportunity to review the transcript and ensure that there is nothing in here you would prefer to keep just within this group, or which has been mistranscribed or edited. Other than these two points I will ask you to use a 'light touch' in editing - it is the conversational tone of such pieces which makes them so readable, I think.

To explain the context for you: I intend to introduce the article with a brief rundown of events thus far, so the rapid beginning will be tempered somewhat for the reader who does not have a detailed knowledge of the scenario. It also seems sensible to include the text of articles 53 and 54 next to the discussion to better allow readers to follow its intricacies. Finally, it strikes me as best in this case, and with your permission, to include a disclaimer along these lines:

All participants' opinions in this article are their own, and not representative of their law firms, governments or clients.
(Comments on the detail of the text welcome).

I hope this all meets your approval.

Unfortunately we are working to a tight deadline, and I would appreciate a response as soon as possible. I know this is a sensitive subject and thus I don't like specifying a drop-dead deadline, but we must send the magazine to the printers by the end of the week, unfortunately.

With thanks again,
Clare

Clare Bolton
Editor

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14/01/2009

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