

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Omega Engineering and Mr. Oscar Rivera

v.

Republic of Panama

(ICSID Case No. ARB/16/42)

PROCEDURAL ORDER No. 3

Members of the Tribunal

Mr. Laurence Shore, President of the Tribunal
Prof. Horacio A. Grigera Naón, Arbitrator
Prof. Zachary Douglas, Arbitrator

Secretary of the Tribunal

Catherine Kettlewell

February 6, 2020

Procedural Order No. 3

I. PROCEDURAL HISTORY

1. Pursuant to Section 19.1 of Procedural Order No. 1, a pre-hearing organizational call between the Parties and the Tribunal was held by telephone conference on January 13, 2020 (the “**Pre-Hearing Call**”). Participating in the telephone conference were:

Tribunal:

Mr. Laurence Shore, President
Prof. Horacio Grigera Naón, Co-arbitrator
Prof. Zachary Douglas, Co-arbitrator

ICSID Secretariat:

Ms. Catherine Kettlewell, Secretary of the Tribunal

On behalf of the Claimants:

Ms. Melissa Gorsline, Jones Day
Mr. Charles Kotuby, Jones Day
Mr. Carlos Concepcion, Shook, Hardy & Bacon
Mr. Ricardo Ampudia, Shook, Hardy & Bacon
Mr. Oscar Rivera, Claimant & Claimant Representative

On behalf of the Respondent:

Mr. Henry Weisburg, Shearman & Sterling LLP
Mr. Christopher Ryan, Shearman & Sterling LLP
Ms. Anna Stockamore, Shearman & Sterling LLP
Ms. Germaine Perret, Republic of Panama

2. During the call, the Parties and the Tribunal discussed the draft agenda for the Pre-Hearing Call circulated to the Parties on January 8, 2020, as well as the Parties’ joint comments provided on January 12, 2020, which indicated their agreements and their respective positions where no agreement was reached.
3. An audio recording of the Pre-Hearing Call was made and deposited in the archives of ICSID. The recording was made available to the Tribunal and the Parties on January 13, 2020.
4. Having considered the Parties’ positions, this Order sets out the Procedural Rules that the Parties have agreed upon and/or the Tribunal has determined will govern the conduct of the Hearing.

Procedural Order No. 3

II. ORDER

A. Date and Venue

5. The first week of the Hearing is scheduled to take place from February 24 to 28, 2020 at the ICSID facilities in Washington, DC (“**First Week Hearing**”). There will be three additional days in the period from March 30, 2020 to April 2, 2020 (“**Second Week Hearing**” and together with the First Week Hearing, the “**Hearing**”). In due course, the Tribunal will specify the three days for the Second Week Hearing.

B. Order of Proceedings

6. On January 2, 2020, the Tribunal invited the Parties to provide the final list of witnesses and experts by January 31, 2020. The Parties jointly submitted a list on January 31, 2020.
7. The general structure of the Hearing will be as indicated in **Annex A**.

C. Daily Schedule

8. The Parties have agreed that each day of the Hearing will commence at 9:00 AM and it will conclude by 6:00 PM (Washington, DC time). There will be two coffee breaks of 15 minutes each (one in the morning and one in the afternoon), and a lunch break of one hour.

D. Time Allocation

9. The Tribunal calculated approximately 6.5 hours of effective time per day for a total of 52 hours for the Hearing.¹ After the Tribunal proposed this total to the Parties during the Pre-Hearing Call, it assigned a total of 23 hours for each Party and reserved 6 hours for the Tribunal. The Parties agree to this time allocation.
10. Each Party shall have one (1) hour from their allocation for an opening statement.
11. Time taken by the Tribunal for its own questions during the Parties’ presentations or witness or expert examination(s) and the answers to those questions shall not be counted against the Parties’ time. Time used for house-keeping matters shall also be counted against the Tribunal’s allotted time.
12. Regarding direct examination of quantum experts, the Tribunal has proposed to amend Section 18.11.2 of Procedural Order No. 1. Instead of a 30-minute presentation, the Tribunal has decided on a 15-minute presentation by the expert with some flexibility,

¹ This is 6.5 hours * 8 days (First Week Hearing and Second Week Hearing) = 52 hours.

Procedural Order No. 3

if needed. The Tribunal will provide further directions in due course. The experts' brief presentations are in lieu of a direct examination.

13. Time shall be kept using the chess-clock method.
14. The Secretary of the Tribunal shall keep the time under the direction of the Tribunal and provide the Parties a count of the time used and the time remaining at the end of each day of the Hearing.

E. Documents for Use at the Hearing

1. Chronological Compilation of Exhibits

15. As provided in Section 13.7 of Procedural Order No. 1, the Parties shall provide a chronological compilation of exhibits for the Tribunal and the Secretary of the Tribunal. The Parties shall deliver this compilation to each of the Members of the Tribunal and the Secretary of the Tribunal one week prior to the start of the Hearing (*i.e.* **February 17, 2020**) at the addresses indicated in Procedural Order No. 1.

2. Unified Joint USB

16. As agreed by the Parties, there shall be a unified USB (PC and Mac compatible) containing all pleadings, witness statements, expert reports, exhibits and legal authorities on file. As requested by the Tribunal, the USB shall contain a hyper-linked index. The hyperlinked index shall identify with **RED** material that has been designated as "protected information." (See, U.S.-Panama TPA, Articles 10.21(2), 10.21(4) and 10.29.)
17. The Parties shall deliver the unified joint USB to each of the Members of the Tribunal and the Secretary of the Tribunal one week prior to the start of the Hearing (*i.e.* **February 17, 2020**) at each of the addresses indicated in Procedural Order No. 1.²
18. As agreed by the Parties, and in light of the chronological compilation, there shall be no hard copy Core Bundle.

3. Examination Bundles

19. If a Party wishes, it may prepare hard copies of examination bundles for the examination of any witness(es) and expert(s).
20. If an examination bundle is used, the parties shall organize the bundle separating each document with a tab and in the order corresponding to its C- or R- numbering for Exhibits, and CLA- or RLA- numbering for Legal Authorities.

² Dr. Grigera Naon has requested that the packages be sent without requesting signature for delivery.

Procedural Order No. 3

21. The examination bundle shall include an index identifying with **RED** material that has been designated as “protected information.” (*See*, U.S.-Panama TPA, Articles, 10.21(2), 10.21(4) and 10.29.) In addition, any documents that contain “protected information” shall be printed on **LIGHT RED** paper.
22. The examination bundles shall be distributed at the beginning of the relevant examination.
23. A Party using examination bundles shall have 8 copies available for distribution to: each Member of the Tribunal (2 copies only; Prof. Douglas will not require a copy); the Secretary of the Tribunal (1 copy); opposing counsel (1 copy); witness(es) or expert(s) being examined in person (1 copy); interpreters (1 copy), and each court reporter (2 copy).

4. Demonstrative Exhibits

24. Section 16.8 of Procedural Order No. 1 is applicable on this subject. Demonstrative exhibits shall be distributed to opposing counsel and the Members of the Tribunal at least 1 hour before the estimated commencement of the relevant event (*i.e.* opening, closing, direct or cross examination).
25. Each Party shall have at least 8 copies of any demonstrative exhibit available for distribution to: each Member of the Tribunal (3 copies), the Secretary of the Tribunal (1 copy), opposing counsel (1 copy), each court reporter (2 copies), and the interpreters (1 copy).
26. At the end of the Hearing day, the Party presenting the demonstrative exhibit shall provide an electronic copy to the Secretary of the Tribunal copying opposing counsel and upload such demonstrative exhibit with the corresponding Exhibit number to BOX.

F. Witness and Experts Examinations

27. The Parties have provided the notices of witnesses and experts to be examined on January 13, 2020. The Tribunal invited the Parties to indicate by January 31, 2020, whether they wish to add any witnesses after the Claimants’ Rejoinder on Jurisdiction. On January 31, 2020, the parties submitted their final list of witnesses and experts indicating whether they would testify in the First Week Hearing or the Second Week Hearing
28. At this moment, the Tribunal does not wish to examine any witness or expert not called by the Parties.
29. The rules and procedure concerning the conduct of examinations and sequestration rules are established in Procedural Order No. 1, Section 18, with the aforementioned amendment regarding direct examination of experts in Section 18.11.2.

Procedural Order No. 3

G. Interpretation

30. In accordance with the Parties' agreement, the Centre has arranged for English-Spanish-English interpretation to be available every day of the Hearing.

H. Audio Recording and Transcripts

31. Section 21.1 of Procedural Order No. 1 concerning audio recording applies.

32. Section 21.2 of Procedural Order No. 1 concerning transcripts applies. The Parties agreed that in light of the number of witnesses whose native language is Spanish, it is likely that there will be multiple days where non-English witnesses or experts are examined. The Centre has arranged for the Spanish court reporter available every day of the Hearing.

33. The Parties agreed to the following amendment to Section 21.3:

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 **of the Second Week Hearing**. The agreed corrections may be entered by the Parties in the transcripts ("revised transcripts"). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the Parties in the revised transcripts.

I. Pre-Hearing Skeleton

34. The Tribunal decided on June 19, 2019 that "[t]he *Pre-Hearing Skeletons* would be dispensed with in view of the prior extensive briefing."

J. Post-Hearing Briefs

35. The Parties agreed that this issue should be deferred until the Second Week Hearing. The Claimants indicated that they anticipated that their preference will be for post-hearing briefs instead of oral closings. The Respondent stated that it was too early to formulate a position in this regard.

K. Statement on Costs

36. The Parties agreed that this issue should be deferred until the Second Week Hearing. The Claimants have anticipated that their position will be that there should be one cost submission of maximum 5-page length, exchanged simultaneously 30 days after the end of the Hearing or, if applicable, the filing of any post-hearing brief. The Respondent stated that it could not predict events of the hearing, so it was not in a position to anticipate length or time frame. It did, however, believe that the length and time should be reasonable.

Procedural Order No. 3

L. Written Submissions and Attendance of the “non-disputing Party”

37. On January 6, 2020, the United States of America informed the Tribunal of its intent to make a written submission pursuant to Article 10.20(2) of the U.S.-Panama TPA. The United States of America further indicated that the Parties had agreed to the proposed deadline for the corresponding submission. On January 7, 2020, the Tribunal confirmed and invited the United States of America to make its written submission by **Monday, February 3, 2020**.
38. At the time of the Pre-Hearing Call, the Tribunal invited the Parties to comment on a suggested briefing schedule for comments on the submission from the United States of America. The Tribunal will accept written comments from a Party by 10 pm Washington, DC, time, 14 February 2020, in advance the Hearing. The Parties will also be at liberty to comment on the submission of the United States of America during opening statements at the Hearing or in post-hearing briefs, if applicable.
39. As agreed by the Parties, representatives of the United States of America (the “non-disputing Party” under the U.S.-Panama TPA) are allowed in the Hearing room. On January 13, 2020, the Secretary of the Tribunal informed the United States of America of the dates reserved for the Hearing. As instructed by the Tribunal, the United States of America indicated on January 27, 2020 the names of the persons who will be attending the Hearing.

M. Transparency

40. In accordance with Article 10.21(2) of the U.S.-Panama TPA, and Section 20.6 of Procedural Order No. 1, the Hearing shall be public.
41. As agreed by the Parties, the Hearing will be made public via streaming to an overflow room with a one-hour delay. On January 23, 2020, the Parties were advised that streaming to the overflow room could only be in one language and that only English would be streamed to the overflow room. Both Parties confirmed their agreement to streaming only in English. An announcement to this effect shall be published on the ICSID Website.
42. The index of the Electronic Core Bundle and the index of any Examination Bundle shall identify with **RED** material that has been designated as “protected information” as indicated *supra*, ¶ 21.
43. The Parties have agreed on a protocol to prevent public disclosure of “protected information”, included as **Annex B**.
44. At the moment of the Pre-Hearing Call, the Parties indicated that they did not foresee any issues or restrictions on the attendance of certain persons at the hearing room for purposes of “protected information”.

Procedural Order No. 3

45. The Tribunal reminds the Parties that it relies on Parties' counsel to raise any issues regarding "protected information".

N. Other Matters

46. During the Pre-Hearing Call, the President of the Tribunal requested that the Parties provide photos of each of the witnesses for purposes of identifying them at the Hearing. The Parties shall provide the aforementioned photos by email one week prior to the start of the Hearing, i.e. **Monday, February 17, 2020**.

O. Logistical Details

47. The logistical details (*e.g.*, confirmation of Hearing room and break-out room, list of Hearing participants, set up details, court reporting arrangements, internet access, audio-visual equipment and catering orders) will be provided by the ICSID Secretariat in due course.

On behalf of the Tribunal,

[signed]

Mr. Laurence Shore
President of the Tribunal
Date: February 6, 2020

Procedural Order No. 3 – Annex A

AGENDA HEARING

(24 February – 28 February 2020, 30 March – 2 April 2020)

Day 1: Monday, 24 February 2020

TIME	PROCEDURAL STEP
9:00 AM-9:30 AM	Tribunal Greeting and Admin (0.5 hr)
9:30 AM-10:30 AM	Claimants' Opening (1.0 hr)
10:30 AM-10:45 AM	Tribunal Questions and Admin (.25 hr)
10:45 AM-11:00 AM	Break
11:00 AM-12:00 PM	Respondent's Opening (1.0 hr)
12:00 PM-12:15 PM	Tribunal Questions and Admin (0.25 hr)
12:15 PM-1:15 PM	Lunch
1:15 PM-1:30 PM	Lopez Direct/Redirect (0.25 hr)
1:30 PM-3:30 PM	Lopez Cross (2.0 hrs)
3:30 PM-3:45 PM	Break
3:45 PM-5:00 PM	Lopez Cross (1.25 hrs)
5:00 PM-5:15 PM	Tribunal Questions and Admin (0.25 hr)

Day 2: Tuesday, 25 February 2020

TIME	PROCEDURAL STEP
9:00 AM-9:15 AM	Tribunal Admin (0.25 hr)
9:15 AM-10:00 AM	Lopez Cross (0.75 hr)
10:00 AM-10:15 AM	Tribunal Questions and Admin (0.25 hr)
10:15 AM-10:30 AM	Break
10:30 AM-10:45 PM	Rivera Direct/Redirect (0.25 hr)
10:45 AM-12:45 PM	Rivera Cross (2.0 hrs)
12:45 PM-1:45 PM	Lunch
1:45 PM-3:45 PM	Rivera Cross (2.0 hrs)
3:45 PM-4:00 PM	Tribunal Questions and Admin (.25 hr)
4:00 PM-4:15 PM	Break
4:15 PM-4:45 PM	Villalba Direct/Redirect (0.5 hr)
4:45 PM-5:00 PM	Tribunal Admin (.25 hrs)

Day 3: Wednesday, 26 February 2020

TIME	PROCEDURAL STEP
9:00 AM-9:15 AM	Tribunal Admin (0.25 hr)
9:15 AM-10:45 AM	Villalba Cross (1.5 hrs)
10:45 AM-11:00 AM	Break
11:00 AM-12:30 PM	Villalba Cross (1.5 hrs)
12:30 PM-12:45 PM	Tribunal Questions (0.25 hr)
12:45 PM-1:45 PM	Lunch

Omega Engineering and Mr. Oscar Rivera v. Republic of Panama
(ICSID Case No. ARB/16/42)

Procedural Order No. 3 – Annex A

1:45 PM-2:15 PM	Barsallo Direct/Redirect (0.5 hr)
2:15 PM-3:45 PM	Barsallo Cross (1.5 hrs)
3:45 PM-4:00 PM	Break
4:00 PM-4:45 PM	Barsallo Cross (0.75 hr)
4:45 PM-5:00 PM	Tribunal Questions and Admin (0.25 hr)

Day 4: Thursday, 27 February 2020

TIME	PROCEDURAL STEP
9:00 AM-9:15 AM	Tribunal Admin (0.25 hr)
9:15 AM-9:45 AM	Buendia Direct/Redirect (0.5 hr)
9:45 AM-10:45 AM	Buendia Cross (1.0 hr)
10:45 AM-11:00 AM	Break
11:00 AM-11:45 AM	Buendia Cross (0.75 hr)
11:45 AM-12:00 PM	Tribunal Questions (0.25 hr)
12:00 PM-1:00 PM	Lunch
1:00 PM-1:30 PM	Varela Direct/Redirect (0.5 hr)
1:30 PM-3:00 PM	Varela Cross (1.5 hrs)
3:00 PM-3:15 PM	Break
3:15 PM-4:45 PM	Varela Cross (1.5 hrs)
4:45 PM-5:00 PM	Tribunal Questions and Admin (0.25 hr)

Day 5: Friday, 28 February 2020

TIME	PROCEDURAL STEP
9:00 AM-9:15 AM	Tribunal Admin (0.25 hr)
9:15 AM-9:45 AM	Lopez Zadicoff Direct Presentation (0.5 hr)
9:45 AM-10:45 AM	Lopez Zadicoff Cross (1.0 hr)
10:45 AM-11:00 AM	Break
11:00 AM-12:30 PM	Lopez Zadicoff Cross (1.5 hrs)
12:30 PM-12:45 PM	Lopez Zadicoff Redirect (0.25 hr)
12:45 PM-1:00 PM	Tribunal Questions (0.25 hr)
1:00 PM-2:00 PM	Lunch
2:00 PM-2:30 PM	Flores Direct Presentation (0.5 hr)
2:30 PM-3:45 PM	Flores Cross (1.25 hrs)
3:45 PM-4:00 PM	Break
4:00 PM-5:15 PM	Flores Cross (1.25 hrs)
5:15 PM-5:30 PM	Flores Redirect (0.25 hr)
5:30 PM-5:45 PM	Tribunal Questions and Admin (0.25 hr)

Procedural Order No. 3 – Annex A

Day 6: Monday, 30 March 2020

TIME	PROCEDURAL STEP
9:00 AM-9:15 AM	Tribunal Admin (0.25 hr)
9:15 AM-9:45 AM	Zarak Direct/Redirect (0.5 hr)
9:45 AM-10:45 AM	Zarak Cross (1.0 hr)
10:45 AM-11:00 AM	Break
11:00 AM-11:45 PM	Zarak Cross (0.75 hr)
11:45 AM-12:00 PM	Tribunal Questions and Admin (0.25 hr)
12:00 PM-1:00 PM	Lunch
1:00 PM-1:15 PM	Ponce Direct Presentation (0.25 hr)
1:15 PM-2:15 PM	Ponce Cross (1.0 hr)
2:15 PM-2:30 PM	Ponce Redirect (0.25 hr)
2:30 PM-2:45 PM	Tribunal Questions (0.25 hr)
3:45 PM-3:00 PM	Break
3:00 PM-3:15 PM	Troyano Direct Presentation (0.25 hr)
3:15 PM-4:45 PM	Troyano Cross (1.5 hrs)
4:45 PM-5:00 PM	Tribunal Questions and Admin (0.25 hr)

Day 7: Tuesday, 31 March 2020

TIME	PROCEDURAL STEP
9:00 AM-9:15 AM	Tribunal Admin (0.25 hr)
9:15 AM-9:45 AM	Troyano Cross (0.5 hr)
9:45 AM-10:00 AM	Troyano Redirect (0.25 hr)
10:00 AM-10:15 AM	Tribunal Questions (0.25 hr)
10:15 AM-10:30 AM	Break
10:30 AM-10:45 AM	Arjona Direct Presentation (0.25 hr)
10:45 AM-12:45 PM	Arjona Cross (2.0 hrs)
12:45 PM-1:45 PM	Lunch
1:45 PM-2:15 PM	Arjona Redirect (0.5 hr)
2:15 PM-2:30 PM	Tribunal Questions and Admin (0.25 hr)
2:30 PM-2:45 PM	Jimenez Direct Presentation (0.25 hr)
2:45 PM-3:45 PM	Jimenez Cross (1.0 hr)
3:45 PM-4:00 PM	Break
4:00 PM-5:00 PM	Alison Jimenez Cross (1.0 hr)
5:00 PM-5:15 PM	Tribunal Questions and Admin (0.25 hr)

Day 8: Wednesday, 1 April 2020

TIME	PROCEDURAL STEP
9:00 AM-9:15 AM	Tribunal Admin (0.25 hr)
9:15 AM-9:30 AM	Jimenez Redirect (0.25 hr)

Omega Engineering and Mr. Oscar Rivera v. Republic of Panama
(ICSID Case No. ARB/16/42)

Procedural Order No. 3 – Annex A

9:30 AM-9:45 AM	Tribunal Questions (0.25 hr)
9:45 AM-10:00 AM	Pollitt Direct Presentation (0.25 hr)
10:00 AM-10:15 AM	Break
10:15 AM-12:15 PM	Pollitt Cross (2.0 hrs)
12:15 PM-1:15 PM	Lunch
1:15 PM-2:15 PM	Pollitt Cross (1.0 hr)
2:15 PM-2:45 PM	Pollitt Redirect (0.5 hr)
2:45 PM-3:15 PM	Tribunal Questions and Admin (0.5 hr)

Day 9: Thursday, 2 April 2020

[Tribunal deliberations per PO 1, ¶ 20.4.]

Procedural Order No. 3 – Annex B

ANNEX B
PROTOCOL FOR PROTECTION OF “PROTECTED INFORMATION” HEARING

(24 February – 28 February 2020 & 30 March 2020 – 1 April 2020)

A. Objectives

1. These protocols are established to ensure:
 - (a) The maximum transparency of the Hearing, under the transparency regime established by Article 10.21 of the U.S.-Panama TPA.
 - (b) The confidentiality of “protected information” (as defined in Article 10.29 of the U.S.-Panama TPA) excluded from disclosure under the regime established in Article 10.21 of the U.S.-Panama TPA.
 - (c) An efficient, smooth and minimally disrupted Hearing.

B. GENERAL RULES

2. As agreed by the Parties, the Hearing will be broadcasted in one-hour delay through overflow room.
3. “Protected information” shall be protected from disclosure by holding relevant parts of the Hearing “in private”, instead of publicly.
4. The privacy of the Hearing shall be achieved, when necessary, through the moderation of the video feed, and the redaction of relevant parts of the transcripts before publication.
5. The term “moderation” means that the video feed will be muted and the screen will be showing a sign indicating that the Hearing is temporarily held “in private.”
6. The Parties shall follow the protocols established below to alert the Tribunal of the use of “protected information” during the Hearing and request the “moderation” of the video feed.

C. PROTOCOLS

7. A Party may request at any time during the Hearing that part of the Hearing be held “in private” and that the broadcast be moderated temporarily to prevent disclosure of “protected information.”
8. The Parties shall request moderation of the video feed **before** the “protected information” is discussed, addressed or shown at the Hearing (whether by the counsel or by witnesses or experts).
9. The Parties shall still follow protocol 8 above. Requests for moderation after alleged “protected information” has been discussed can only be accommodated in exceptional circumstances and

Procedural Order No. 3 – Annex B

in a minimum number (i.e. no more than one moderation per hour). In such case, the Party requesting the delayed moderation is responsible for identifying and promptly communicating the exact video time stamp (hour, minute, second) of the moderation request **before** the end of the respective hour.

10. To avoid delayed requests for moderation, which may result in a breach of confidentiality, the Parties are responsible to identify, **before** discussing, addressing or showing (whether through counsel submissions or through witnesses or experts examination) documents or information, whether these are “protected information” or could raise confidentiality issues.
11. To minimize the number of interruptions, the Parties are invited to organize the topics addressed during their oral statements and witness/expert examinations so that those which involve “protected information” are grouped together, wherever possible.
12. Each Party shall designate one member of its legal team who shall be responsible for bringing moderation requests to the Tribunal’s attention.
13. The Parties shall request moderation of the video feed both orally and by using the **RED** sign provided by the Secretary of the Tribunal before the start of the Hearing.
14. The Parties shall request the resumption of the video feed both orally and using the **GREEN** sign provided by the Secretary of the Tribunal before the start of the hearing.
15. When the Parties request the moderation or resumption of the video feed, the Secretary of the Tribunal shall inform the technician in charge of the video feed, using audiovisual alert device located in the technical booth. A **RED** light will be shown in the Hearing room to signal to participants when the video feed is closed to the public.
16. If a Party has an objection to the moderation or resumption of the video feed requested by the other Party, it shall immediately alert the Tribunal, which shall hear the Parties and decide on the matter. The discussion between the Parties and the Tribunal shall be held “in private” and the transcript shall be marked “confidential”.
17. If the Tribunal decides that documents and information about to be discussed, addressed or shown warrant the Hearing to be temporarily held “in private”, the video feed shall be moderated per the Tribunal’s instructions.
18. Resumption of the video feed shall be requested by the Party which requested and obtained moderation (subject to any objection to resumption under protocol 16 above) or proposed by the Tribunal. Resumption may also be requested by the other Party if it deems it necessary. The Tribunal shall rule on any dispute between the Parties in that respect.