INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

WEBUILD S.P.A. (FORMERLY SALINI IMPREGILO S.P.A.)
Claimant

and

ARGENTINE REPUBLIC
Respondent

ICSID Case No. ARB/15/39

DECISION ON RESPONDENT'S REQUEST FOR RECONSIDERATION

Members of the Tribunal
Ms. Lucinda A. Low, President
Professor Kaj Hobér
Professor Jürgen Kurtz

Secretary of the Tribunal
Ms. Mercedes Cordido-Freytes de Kurowski

Assistant to the Tribunal
Professor Freya Baetens

Date of dispatch to the Parties: 25 September 2024

REPRESENTATION OF THE PARTIES

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TABLE OF ABBREVIATIONS/DEFINED TERMS

Except for the terms defined below, or otherwise indicated in this Decision, all other terms defined in the Decision on Liability and Directions on Quantum and used herein shall have the same meaning ascribed to them therein.

Arbitration Rules	ICSID Rules of Procedure for Arbitration Proceedings of 2006
Argentina or the Respondent	The Argentine Republic
BIT or the Treaty	Agreement between the Argentine Republic and the Republic of Italy on the Promotion and Protection of Investments which was signed on 22 May 1990 and entered into force on 14 October 1993
Claimant	Webuild S.p.A. (formerly known as Salini Impregilo S.p.A.)
Claimant's Response	Response filed on 17 July 2024 by Webuild on the Request for Reconsideration, styled as "Claimant's Response to the Argentine Republic's Request for Reconsideration of the Decision on Liability".
Claimant's Surrebuttal	Rejoinder filed on 7 August 2024 by Webuild on Respondent's Reply, styled as "Claimant's Surrebuttal to the Argentine Republic's Request for Reconsideration of the Decision on Liability"
C-[#]	Claimant's Exhibit
CL-[#]	Claimant's Legal Authority
Decision on Jurisdiction	Decision on Jurisdiction and Admissibility issued by the Tribunal on 23 February 2018
Decision on Liability	Decision on Liability and Directions on Quantum issued by the Tribunal on 3 March 2023
FET	Fair and Equitable Treatment

ICSID or the Centre	International Centre for Settlement of Investment Disputes
ICSID Convention or the Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on 14 October 1966
Parties	Webuild and Argentina
PdL or Concessionaire	Puentes del Litoral S.A., a company incorporated in Argentina by certain consortium partners ("Consortium"), including Webuild S.p.A. (formerly Salini Impregilo S.p.A.), to execute a Concession Contract, signed on 14 September 1998, for the construction, operation and maintenance of a bridge and toll road between the cities of Rosario and Victoria in Argentina.
PdL Case	Local proceeding between Puentes del Litoral S.A. and Ministerio de Planificación resulting in the Local Judgment
PdL Judgment or Local Judgment	Decision rendered on 27 June 2024 by the Federal Court on Administrative-Contentious Matters No. 8 of the Argentine Republic of Puentes del Litoral S.A.'s contractual claim against the Ministerio de Planificación
R-[#]	Respondent's Exhibit
Request for Reconsideration	Request filed by the Respondent on 10 July 2024 on the Decision on Liability, styled "Argentine Republic's Submission on the Implications of the PdL Judgment".
Respondent or Argentina	The Argentine Republic
Respondent's Reply	Reply filed on 31 July 2024 by the Respondent on Claimant's Response, styled as "Reply of the Argentine Republic on the Implications of the Judgment in the PdL Case"
RL-[#]	Respondent's Legal Authority

Tribunal	Arbitral Tribunal constituted on 11 July 2016 and reconstituted on 15 July 2021
Webuild	Webuild S.p.A. (formerly, Salini Impregilo S.p.A.), an Italian industrial group incorporated under Italian law

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I. INTRODUCTION & PROCEDURAL HISTORY

1. On 3 March 2023 the Arbitral Tribunal issued its Decision on Liability and Directions on Quantum (hereinafter, the "**Decision on Liability**"). The Tribunal's main rulings were that:

2. Webuild's claims with respect to its Shareholder Loans were admissible;

3. Argentina had violated Article 2.2 of the BIT, first sentence (the obligation to give fair and equitable treatment ("**FET**") to investments covered by the BIT), through its failure by September 2006, after the end of the economic emergency, to reestablish the economic equilibrium of the Concession as required by the Concession Contract and the Emergency Law;

4. Argentina had also violated Article 2.2 of the BIT, second sentence, by its unjustified conduct in failing to reestablish the economic equilibrium of the Concession within a reasonable time after the end of the economic emergency;

5. In light of the Tribunal's decision relating to Article 2.2 (first and second sentences), the Tribunal decided that no decision needed to be reached by it on the discrimination claims raised by the Claimant under Articles 2.2, 3 and 4, or the expropriation claim raised by the Claimant under Article 5, of the BIT;

6. Argentina's defense of necessity was denied;

7. With respect to damages as a consequence of the breaches noted above, no final decision on the quantum of damages and interest to be awarded was made at that time, with such decision being deferred to the Award following further submissions of the Parties on the questions set forth under VII(B) of the Decision on Liability and further deliberations of the Tribunal. The Tribunal determined that the *Chorzów Factory* standard of full reparation, using an income method, calculated on the basis of free cash flow to the firm, shall be used to calculate damages, including historical damages from September 2006 to the Valuation Date of 31 August 2014, and future damages from that date to the end of the Concession; and,

8. The Tribunal reserved any decision on costs for the Award in these proceedings.[1]

9. On 9 June 2023, each Party filed a submission in response to the Tribunal's questions and instructions in the Decision on Liability.

10. On 18 April 2024, the Tribunal informed the Parties that while it was in the process of drafting its Award, and having deliberations on the same, the Tribunal would find it useful to have the Claimant's comments on the Respondent's requests in its 9 June 2023 submission concerning the local proceedings in connection with the risk of double recovery under paragraph 117(c), (d), (e), and (f) of that submission. The Claimant was requested to file this submission by 26 April 2024.

11. Also on 18 April 2024, the Respondent requested leave from the Tribunal to respond to the Claimant's comments on the matter concerning the risk of double recovery.

12. On 19 April 2024, the Tribunal granted leave to the Respondent to reply to the Claimant's comments by 7 May 2024, giving the Claimant the opportunity to respond, if it so wished, to the Respondent's reply by 15 May 2024.

13. As scheduled, (i) on 26 April 2024, the Claimant filed its comments on the Respondent's requests concerning the local proceedings in connection with the risk of double recovery under paragraph 117(c), (d), (e), and (f) of the Respondent's submission of 9 June 2023; and (ii) on 7 May 2024, the Respondent filed its response. Subsequently, on 10 May 2024, the Claimant filed further comments on the matter.

14. On 21 May 2024, the Tribunal invited the Parties to file short submissions on costs, updating the ones of 12 March 2021, by 31 May 2024.

15. On 31 May 2024, each Party filed an updated statement of costs.

16. On 1 July 2024, the Respondent filed a request for the admissibility of new evidence: a judgment rendered on 27 June 2024 by the Federal Court on Administrative-Contentious Matters No. 8 of the Argentine Republic in the local proceeding entitled "Puentes del Litoral S.A. c/Ministerio de Planificación s/Proceso de Conocimiento" (the "**PdL Case**")

[1] Decision on Liability, ¶ 438.

(the "**PdL Judgment**" or "**Local Judgment**"), which according to Argentina, constituted a "new and relevant fact". The Respondent requested that the Tribunal provide an opportunity for the Parties to file simultaneous submissions on the impact of the PdL Judgment in this arbitration proceeding.

17. On 2 July 2024, the Claimant objected to the Respondent's request, but stated that if the Tribunal was to permit the incorporation of the PdL Judgment, the Tribunal should then allow the Respondent to file a short submission, to be followed by the Claimant's response, with no further submissions.

18. On the same date, the Tribunal informed the Parties that it would allow one round of submissions: the Respondent was to file a copy of the PdL Judgment together with a submission not to exceed 10 pages, by 9 July 2024, and the Claimant, if it so wished, was to file a response with the same page limit by 16 July 2024. By communication of the same date, the Respondent stated that it reserved its rights to request an opportunity to file observations on the Claimant's response. Subsequently, at the Parties' request, the Tribunal extended those deadlines by one day, in light of a national holiday in Argentina.

19. Accordingly, on 10 July 2024, the Respondent filed a submission on the PdL Judgment's impact in this arbitration, together with the PdL Judgment, as Exhibit **A RA-0645**, and Legal Authorities **AL RA-059, AL RA-0201**, **AL RA-0398**, and **AL RA-0405** to **AL RA-0411**. The Respondent's submission, styled "Argentine Republic's Submission on the Implications of the PdL Judgment", included a request on the basis of the PdL Judgment for the Tribunal to revise its Decision on Liability (the "**Request for Reconsideration**").

20. On 11 July 2024, the Claimant called the Tribunal's attention to the fact that the Respondent had actually filed a Request for Reconsideration of the Tribunal's Decision on Liability, instead of a submission that discussed the implications of the PdL Judgment as a new and relevant fact, as the Respondent had originally requested. In light of this, the Claimant requested leave from the Tribunal to file its response by 19 July 2024, instead of by 17 July 2024. On the same date, the Tribunal invited the Respondent to comment on the Claimant's request.

21. On 12 July 2024, the Respondent noted that it did not object to the Tribunal granting such an extension, but that it would in turn request the opportunity to respond to the Claimant's arguments. Subsequently, the Claimant filed an objection to the Respondent's request. On the same date, and after considering the Parties' communications, the Tribunal granted the Claimant's extension request for the filing of its response until 19 July 2024.

22. On 16 July 2024, the Respondent circulated an English translation of its Request for Reconsideration and the PdL Judgment.

23. On 19 July 2024, the Claimant filed a response to the Respondent's Request for Reconsideration, styled "Claimant's Response to the Argentine Republic's Request for Reconsideration of the Decision on Liability," together with Exhibits **C-0461** to **C-0463** in English and Spanish and Legal Authorities **CL-0254** to **CL-0260** (the "**Claimant's Response**").

24. On 23 July 2024, having considered the Parties' positions, and after due deliberation, the Tribunal notified the Parties of its decision to authorize a second round of sequential submissions, and provided its instructions to such effect. The Respondent's submission would be due by 31 July 2024, and the Claimant's by 7 August 2024.

25. As scheduled, on 31 July 2024, the Respondent filed its reply on the Request for Reconsideration, styled "Reply of the Argentine Republic on the Implications of the Judgment in the PdL Case (the "**Respondent's Reply**"), with the English version following on 6 August 2024.

26. On 7 August 2024, the Claimant filed the rejoinder to Argentina's Reply, styled "Claimant's Surrebuttal to the Argentine Republic's Request for Reconsideration of the Decision on Liability" (the "**Claimant's Surrebuttal**").

II. THE PARTIES' POSITIONS

A. RESPONDENT'S POSITION

27. The Respondent submitted its Request for Reconsideration of the Tribunal's Decision on Liability based on the the PdL Judgment, a judgment issued by the Federal Court in

Administrative-Contentious Matters No. 8 of the Judiciary Branch of the Argentine Republic on 27 June 2024.

28. According to the Respondent, the PdL Judgment (i) deals with the same facts at issue in this arbitration proceeding; (ii) involves the Claimant, who participated as an interested third party in the PdL Case given the close connection between the claims made in this arbitration proceeding to those made in the judicial proceeding; and (iii) confirms "that Argentina acted lawfully with respect to the financial problems of Puentes del Litoral ("**PdL**" or "**Concessionaire**") […] during the Concession, and that the termination of PdL's Concession Contract due to the Concessionaire's fault, as provided in the Concession Contract, complied with the requirements of legality and due process."[2]

29. In the first place, the Respondent explains what it considers to be the impact of the PdL Judgment in this arbitration proceeding based on the different outcomes in the Decision on Liability and the Local Judgment despite the similarities between them.

30. *First*, the Respondent notes that the similarity of the claims was asserted by the Claimant at the jurisdictional stage of this proceeding, which was further acknowledged by the Tribunal when it determined "that since the claims brought by PdL in local jurisdiction were substantially similar to Webuild's claim in the arbitration, the BIT's requirements for establishing arbitral jurisdiction had been met."[3]

31. In line with this, the Respondent rejects the Claimant's new position that the PdL Case and this proceeding "maintain fundamental differences".[4] According to the Respondent, the "Claimant cannot seek to benefit from the similarity of the PdL Case and this arbitration for purposes of arguing that it met the jurisdictional requirements […] and, at the same time, deny that similarity in attempt to minimize the implications of the PdL Case Judgment."[5]

[2] Request for Reconsideration, ¶ 2.
[3] Request for Reconsideration, ¶¶ 3-4.
[4] Respondent's Reply, ¶ 9; citing Claimant's Response, ¶ 18.
[5] Respondent's Reply, ¶ 10.

32. *Second*, the Respondent argues that both claims are "substantially similar" as they relate to the same Concession Contract and sovereign acts by Argentina,[6] they faced the same facts,[7] and involved Webuild. Delving into the participation of Webuild in the PdL Case, the Respondent states that Webuild (i) was cited by the judge in the PdL Case as an interested third party due to its shareholder status; (ii) made a filing in the PdL Case; but (iii) failed to file evidence or invoke any rights, despite having been given the opportunity to do so.

33. The Respondent notes that despite the similarities previously detailed, this Tribunal reached a "decision entirely contradictory to the ruling on the PdL Case."[8] Argentina explains that the contradictions between the decisions are as follows.

34. **PdL's financial debacle**: according to the Respondent, this Tribunal decided that the Emergency Law, together with other measures, "were the cause of PdL's financial debacle" and found "irrelevant" the "problems arising from PdL's failure to obtain financing". On the other hand, the Local Judgment concluded that "PdL's financial difficulties were caused by the failure to obtain financing in a timely manner, which was a cause for termination of the Concession Contract."[9]

35. The Respondent adds that the *Hochtief v. Argentina* tribunal dealt with the same facts of this arbitration proceeding and found that PdL "faced serious financial difficulties prior to the emergency measures" due to its failure to obtain firm and irrevocable financing within the timeframe established in the Concession Contract and its indebtedness to its main subcontractor, which triggered PdL's reorganization proceedings.[10] Making reference to the Claimant's allegations that Argentina "overstates the similarity between the cases", and that this Tribunal had witness statements not available in *Hochtief* or the PdL Case and broader witness statements, the Respondent clarifies the following:

[6] Request for Reconsideration, ¶ 3; citing Decision on Jurisdiction, ¶ 134 ("The dispute submitted to Argentine forums by Puentes shared substantially similar facts with the BIT claim subsequently submitted to arbitration by Salini Impregilo. Both related to the same Concession Contract and the same sovereign acts by Argentina.")
[7] Request for Reconsideration, ¶ 12.
[8] Request for Reconsideration, ¶ 6.
[9] Request for Reconsideration, ¶¶ 7-9.
[10] Request for Reconsideration, ¶ 13, citing *Hochtief AG v. Argentine Republic*, ICSID Case No. ARB/07/31, Decision on Liability, 29 December 2014 ("***Hochtief* Decision**"), ¶¶253-258, **AL RA-59**.

36. Regarding witnesses: (i) witness Mr. Villagi filed a witness statement, provided live testimony and was cross-examined during the Hearing on the Merits of this case, and also provided testimony in the *Hochtief* arbitration and the PdL Case; (ii) it is untrue that witnesses Mr. Bes and Mr. Lommatzsch provided different testimonies in *Hochtief* and this proceeding; (iii) none of the witnesses who testified in this arbitration, but not in the PdL Case, "addressed issues that were not already covered."[11]

37. With reference to the documentary evidence, the Respondent states that the "Claimant misrepresents the content of the documents it mentions, and in some cases invents quotes, in order to force the alleged contradiction"[12] and that without any support the Claimant qualifies the PdL Judgment as a "gross incompetence and judicial impropriety."[13]

38. **Unlawful termination of the Concession Contract**: Argentina alleges that this Tribunal found "the termination of the Concession Contract was unjust and attributable to Claimant's conduct and, therefore, considered it a breach of the fair and equitable treatment standard",[14] but the PdL Judgment established that "the State respected the due process and the termination was the only permitted alternative",[15] considering that PdL was dissolved, which was a cause of termination of the Concession Contract pursuant to the Terms and Conditions of the bidding process.

39. The Respondent submits that the Federal Court on Administrative-Contentious Matters No. 8 issued the PdL Judgment based on Argentine law and acted as the "competent court in connection with a contract governed by Argentine law regarding its performance and termination."[16] Accordingly, Argentina argues that the Tribunal "should asses the application of Argentine law in light of the findings of the local Judgment",[17] because otherwise, by failing to apply the municipal law, the Tribunal would be "exceeding its

[11] Respondent's Reply, ¶ 13.
[12] Respondent's Reply, ¶ 15, where Respondent refers to an alleged misrepresentation of the Memorandum of Agreement dated 20 October 2000, UNIREN's Report dated 19 January 2007, the Second Letter of Understanding, a court decision in PdL's reorganization proceeding, and a transcript of the 2011 Public Hearings.
[13] Respondent's Reply, ¶ 15.
[14] Request for Reconsideration, ¶ 10.
[15] Request for Reconsideration, ¶ 11.
[16] Request for Reconsideration, ¶ 14.
[17] Request for Reconsideration, ¶ 19.

powers, and its decision would be subject to annulment under the terms of Article 52 of the ICSID Convention."[18]

40. Finally, the Respondent relies on *Azinian v. Mexico*,[19] *SAUR v. Argentina*,[20] and *América Móvil v. Colombia*[21] to determine that "a public authority cannot be faulted for acting in a manner that has been validated by its courts".[22] The Respondent further asserts that as Webuild's legitimate expectations were determined to be grounded in the Concession Contract, Webuild's legitimate expectations under the BIT "could not consist in the State acting contrary to the law governing the Concession Contract."[23]

41. The Respondent defends the application of *Azinian* despite such case dealing with a claim of expropriation and notes that the tribunal considered "that a local judgment does not preclude the possibility of a breach of a standard of treatment if the local judgment is clearly incompatible with a rule of international law or there is a denial of justice."[24] Argentina further explains that the Claimant does not rebut the fact that "it cannot be concluded that the State breached the treaty by terminating a concession contract if the public authority declared the termination of the contract […] and the local courts confirm the public authority's decision,"[25] which happened in this case.

42. *Third*, the Respondent alleges that this Tribunal has already relied on a local judicial decision, namely the 2008 ruling of the Argentine Commercial Court towards PdL's reorganization proceeding, when ruling on Argentina's liability. Thus, it explains that the Tribunal should consider the PdL Judgment as a *decisive factor* in this instance "since it was issued by the forum specialized in the interpretation and application of the specific Argentine law."[26]

[18] Request for Reconsideration, ¶ 19.
[19] *Robert Azinian, Kenneth Davitian & Ellen Baca v. United Mexican States*, ICSID Case No. ARB(AF)/97/2, Award, Award, 1 November 1999("***Azinian***"), ¶ 96, **AL RA-201**.
[20] *SAUR International v. Argentine Republic*, ICSID Case No. ARB/04/4, Decision on Jurisdiction and Liability, 6 June 2012, ¶ 327, **CL-245**.
[21] *América Móvil S.A.B. de C.V. v. Colombia,* ICSID Case No. ARB(AF)/16/5, Award, 7 May 2021, ¶ 333, **AL RA-405**.
[22] Respondent's Reply, ¶ 7.
[23] Request for Reconsideration, ¶ 14.
[24] Respondent's Reply, ¶ 7; citing Claimant's Response, ¶¶ 27 and 28.
[25] Respondent's Reply, ¶ 7.
[26] Request for Reconsideration, ¶ 20.

43. In the second place, Argentina analyses the Tribunal's power to review the Decision on Liability under the ICSID Convention, and ICSID case law, and concludes that the Tribunal can and should review its Decision on Liability.

44. *First*, Argentina explains that pursuant to Article 41 of the ICSID Convention, the Tribunal can review the Decision on Liability considering that this Article "empower[s] arbitral tribunals to determine their own jurisdiction".[27] It adds that Article 44 of the Convention grants the Tribunal the power to "decide any procedural question not provided for by the ICSID Convention, the Arbitration Rules or the applicable procedural rules."[28] Furthermore, Argentina states that "the revision of a pre-award decision is possible in situations analogous to those provided for in Article 51 of the ICSID Convention"[29] based on "the ground of discovery of some facts of such a nature as decisively to affect the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the applicant."[30]

45. *Second*, the Respondent relies on other ICSID tribunals' decisions to determine that the Tribunal has the power to reopen the Decision on Liability. Argentina explains that in *Cavalum v. Spain*, the tribunal confirmed that the power to reopen a pre-award decision arises from Article 44 of the ICSID Convention and such power may be exercised "when reasons of judicial and arbitral integrity so require."[31] In *Standard Chartered Bank v. Tanzania,* the tribunal found that Articles 41(1) and 44 of the ICSID Convention empowered tribunals to reopen [a decision] in certain limited circumstances. Argentina explains that in *Standard Chartered* the tribunal noted that the decision to reopen a decision (i) "has practical advantages"; (ii) "should be guided by, although, not bound by, the limitations on reopening that apply to awards"; and (iii) "must at least extend to the grounds for reopening an award in Article 51."[32]

[27] Request for Reconsideration, ¶ 23.
[28] Request for Reconsideration, ¶ 21.
[29] Request for Reconsideration, ¶ 22.
[30] Request for Reconsideration, ¶ 22.
[31] *Cavalum SGPS, S.A. v. Spain,* ICSID Case No. ARB/15/34, Decision on the Kingdom of Spain's Request for Reconsideration*,* 10 January 2022, ("***Cavalum***"), ¶¶ 65, 71, **AL RA-406**.
[32] Request for Reconsideration, ¶ 23; citing *Standard Chartered Bank (Hong Kong) Limited v. Tanzania Electric Supply Company Limited*, ICSID Case No. ARB/10/20, Award, 12 September 2016 ("***Standard Chartered***"), ¶¶ 320, 322, **AL RA-408**.

46. Moreover, Argentina states that in *Infracapital v. Spain* the tribunal found that "ICSID tribunals have the authority to re-examine a decision when some fact of decisive importance is discovered on a point already decided." It argues as well that the tribunal in that case also determined that (i) "a new decision of a tribunal could be considered a 'fact'"; (ii) that this decision constituted a *newly discovered fact* if it was unknown to the tribunal and the party seeking review; and (iii) it should be established if the new decision constituted or not "an outcome-determinative legal development."[33] Furthermore, the Respondent argues that the PdL Judgment is a *newly discovered fact* "since it did not exist at the time the Decision on Liability was issued", thus "it was unknown to the Tribunal and the Respondent", and that it constitutes an outcome-determinative legal development since "it was issued by a Court with jurisdiction regarding the Concession Contract governed by Argentine law, which is part of the law applicable in the present arbitration."[34]

47. Additionally, the Respondent contests the Claimant's position that the PdL Judgment must be either binding or controlling for review to be granted. Argentina explains that both *Landesbank v. Spain* and *Cavalum v. Spain* established that "a subsequent legal authority is not enough by itself to warrant reconsideration, but it must be a decisive legal authority."[35] Argentina insists that the PdL Judgment fulfils the standard.

48. To conclude, Argentina requests that the Tribunal reconsider and revise the Decision on Liability, taking into account that the PdL Judgment is not only a persuasive but a determinative element since it (i) was issued by a court of the jurisdiction specialized in the interpretation and application of the specific Argentine law governing the Concession Contract; (ii) analysed the same facts as have been considered in this proceeding; and (iii) involved the same parties.[36]

[33] Request for Reconsideration, ¶ 24; citing *Infracapital F1 S.à r.l. and Infracapital Solar B.V. v. Spain*, ICSID Case No. ARB/16/18, Decision on Respondent's Second Request for Reconsideration, 19 August 2022, ¶¶ 33, 36, 37, 90, **AL RA-411**; *Infracapital F1 S.à r.l. and Infracapital Solar B.V. v. Spain,* ICSID Case No. ARB/16/18, Decision on Respondent's Request for Reconsideration Regarding the Intra-EU Objection and Merits, 1 February 2022, ¶¶ 89, 90, **AL RA-409**.
[34] Request for Reconsideration, ¶ 25.
[35] Respondent's Reply, ¶¶ 6-7, citing *Landesbank Baden-Württemberg, et. al v Spain,* ICSID Case No. ARB/15/45, Decision on Respondent's Request for Reconsideration, 22 February 2023, ("***Landesbank***"), **CL-255**; and *Cavalum*, ¶¶ 80-81, **AL RA 406**.
[36] Request for Reconsideration, ¶¶ 20, 25, 26. Respondent's Reply, ¶¶ 20-21.

B. CLAIMANT'S POSITION

49. The Claimant rejects the Respondent's Request for Reconsideration of the Tribunal's Decision on Liability, and rebuts the Respondent's arguments as follows.

50. In the first place, the Claimant states that the Decision on Liability is *res judicata* and binding on the Parties; thus, Webuild affirms that the Tribunal owes no deference to the PdL Judgment. Webuild asserts that "the Decision on Liability represents the Tribunal's decision on issues of fact and law"[37] and bases its conclusion on an International Court of Justice judgment:

> [O]nce the Court has made a determination, whether on a matter of the merits of a dispute brought before it, or on a question of its own jurisdiction, that determination is definitive both for the parties to the case, in respect of the case […] and for the Court itself in the context of that case. […] For the Court *res judicata pro Veritate habetur*, and the judicial truth within the context of a case is as the Court has determined it […] This result is required by the nature of the judicial function, and the universally recognized need for stability of legal relations.[38]

51. In the same vein, Webuild relies on other ICSID awards and affirms that "tribunals have found that a pre-award decision on an issue of fact or law is binding on the parties,"[39] and adds that the Tribunal rendered a decision after eight years of proceedings in which it heard the Parties -including the issues that Argentina "rehashes in its Request for Reconsideration"-, analysed the complexities of this case not present in other concessions,[40] and took into account the totality of the facts and evidence in the case.[41]

52. Accordingly, Webuild affirms that "the Tribunal is far from being an outlier in terms of its legal and factual analysis as the Argentine Republic suggests."[42] The Claimant further

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[37] Claimant's Response, ¶ 4.
[38] Claimant's Response, ¶3, citing to *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro*), ICJ Judgment, 26 February 2007, ¶¶ 139-140, **CL-0254**.
[39] Claimant's Response, ¶ 3, relying on *Standard Chartered*, **AL RA-408**, *Cavalum*, **AL RA-406**; *Landesbank*, ¶ 36, **CL-0255**; *Waste Management Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Decision on Mexico's Preliminary Objection concerning the Previous Proceeding, 26 June 2002, ***("Waste Management II"),*** ¶ 47, **CL-0189**; *Perenco Ecuador Limited v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Decision on Ecuador's Reconsideration Motion, 10 April 2015, ("***Perenco***"), ¶ 42, **CL-0256**; *CMS Gas Transmission Company v. Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005, ¶ 126, **CL-0005**; *ConocoPhillips v. Venezuela*, ICSID Case No. ARB/07/30, Decision on Respondent's Request for Reconsideration, 10 March 2014, ¶¶ 20-21, **CL-0257**.
[40] Claimant's Response, ¶ 4.
[41] Claimant's Response, ¶ 13; Claimant's Surrebuttal, ¶ 14.
[42] Claimant's Response, ¶ 4.

alleges that Argentina overstates the relevance of the PdL Judgment and the *Hochtief* Decision on liability because "the Tribunal here had available to it the benefit of witness and expert testimony not available in either the *Hochtief* arbitration nor in Puentes del Litoral's lawsuit and [is] free to carry out its own independent analysis."[43]

53. Also, the Claimant in its Surrebuttal addresses the clarifications made by the Respondent regarding witnesses and documentary evidence filed in this case:

54. Webuild explains that Mr. Bes' testimony within this arbitration "did not analyze or could not really testify as to the IDB's reasons why disbursements were not made, a fact he did not admit in the *Hochtief* arbitration."[44]

55. Mr. Lamdany, not Mr. Villagi, was unavailable to participate in the Hearing on the Merits, however, the latter did render additional testimony in this proceeding regarding UNIREN reports.[45]

56. Therefore, Webuild concludes that the "Tribunal's decision is conclusive and leaves no room for reconsideration" as it "represents the Tribunal's final conclusions of law and fact as to liability and is binding on the Parties and the Tribunal."[46]

57. Finally, Webuild expressly states that it disagrees with the Respondent's assertion that the Parties "generally agree that an arbitral tribunal may revise its pre-award decisions." On the contrary, the Claimant emphasizes that Decision on Liability is *res judicata*[47] and that "local law cannot rehabilitate the Argentine Republic's international liability"[48] considering that the obligations acquired under the BIT "go beyond mere contractual breaches even if the factual basis of the two types of claims may to a large extent coincide."[49]

[43] Claimant's Response, ¶ 6.
[44] Claimant's Surrebuttal, ¶ 17.
[45] Claimant's Surrebuttal, ¶ 18-20.
[46] Claimant's Response, ¶ 6.
[47] Claimant's Surrebuttal, ¶ 2.
[48] Claimant's Surrebuttal, ¶ 4.
[49] *Impregilo S.p.A. v. Argentine Republic*, ICSID Case No. ARB/07/17, Award, 21 June 2011 ¶ 182, **CL-0003**.

58. In the second place, the Claimant asserts that the Tribunal does not have the power to reopen and reconsider wholesale the Decision on Liability. According to Webuild such power (i) is not unlimited and is available to reconsider only *some* aspects if (ii) the Tribunal "did not intend its decision to be final", and (iii) there are *exceptional* circumstances, which are not present in this case.[50]

59. On the first point, Webuild explains that inasmuch as the ICSID Convention is silent on a tribunal's power to revise prior decisions, arbitral tribunals have taken two opposing pathways towards the powers granted by Article 44 of the Convention. On the one hand, tribunals have rejected the possibility of revisiting previous decisions[51], and on the other hand, tribunals have found the power to review decisions is inherent in the conduct of a proceeding.[52] Moreover, the Claimant states that "regardless of the different paths taken, all tribunals agree that an ICSID tribunal cannot reconsider its prior decisions absent limited and exceptional circumstances, nor can the reconsideration be unconstrained."[53]

60. On the second aspect, Webuild rebuts Respondent's commentary on *Standard Chartered* and *Cavalum*. The Claimant states that the *Standard Chartered* tribunal decided that "the decisions made by ICSID tribunals in the course of a case are binding" and that "a decision of an ICSID tribunal cannot be considered to be merely a draft that can be reopened at will."[54] The Claimant asserts that in *Cavalum*, the tribunal held that "if a decision is made on a preliminary issue of law which is intended to be final, the mere fact that it may have been erroneous may not be a sufficient ground for reopening this decision."[55]

61. Following this argument, Webuild affirms that this Tribunal issued both the Decision on Jurisdiction and Decision on Liability as final and binding decisions being "fully aware that Puentes del Litoral had initiated a lawsuit before a contentious administrative court in Argentina."[56] The Claimant notes that the Tribunal (i) "rejected the Argentine Republic's

[50] Claimant's Response, ¶ 7. See Claimant's Surrebuttal, ¶¶ 4-5.
[51] Claimant's Response, ¶ 8, where Webuild cites *ConocoPhillips v. Venezuela*, ICSID Case No. ARB/07/30, Decision on Respondent's Request for Reconsideration, 10 March 2014, ¶ 22, **CL-0257** ("Article 44 of the ICSID Convention makes explicit the tribunal's power to address procedural issues not dealt with in the Convention or the Rules. […] It cannot be seen as conferring a broad unexpressed power of substantive decision.")
[52] Claimant's Response, ¶ 8; citing *Landesbank*, ¶ 36, **CL-0255**.
[53] Claimant's Response, ¶ 8.
[54] Claimant's Response, ¶ 9, citing *Standard Chartered*, ¶ 322, **AL RA-408**.
[55] Claimant's Response, ¶ 10, citing *Cavalum*, ¶ 75, **AL RA-406**.
[56] Claimant's Response, ¶ 11.

request to stay the arbitration proceeding pending Puentes del Litoral's lawsuit"; and (ii) "dismissed the *forum non conveniens* objection."[57] On the latter point, the Claimant argues that the Tribunal's decision on its Decision on Jurisdiction remains relevant because "if Puentes del Litoral's contractual lawsuit was not a reason to grant the Argentine Republic's *forum non conveniens* objection, the judgment resulting from that litigation cannot justify reconsideration of the Tribunal's Decision on Liability either."[58]

62. Based on these considerations, the Claimant states that the PdL Judgment should not change the Tribunal's analysis as (i) Webuild claims under the BIT are independent and distinct from the contractual claims asserted by Puentes del Litoral in local courts;[59] (ii) Webuild appeared in the PdL Case "against its will and its BIT claims were not subject to that court's jurisdiction"[60]; and (iii) it dealt with a different cause of action, was brought by different party, and applied domestic law only. Finally, the Claimant establishes that the Local Judgment has no effect on the Tribunal's determination of liability despite the relation between the causes as "a state may breach a treaty without breaching a contract"[61] and "a breach of contract is neither necessary nor a sufficient condition for a breach of treaty."[62]

63. In the third place, Webuild alleges the Local Judgment has no effect, either controlling or persuasive, on the Decision on Liability given that it (i) does not provide new evidence; and (ii) the Tribunal owes no deference to the Local Judgment.[63]

64. By citing *Landesbank* the Claimant states that the grounds for reconsideration pursuant to Article 51 of the ICSID Convention are narrow, including a new discovered fact of such nature as to decisively affect the outcome if it had been known at the time the decision was

[57] Claimant's Response, ¶ 11.
[58] Claimant's Surrebuttal, ¶ 7.
[59] Claimant's Surrebuttal, ¶ 6 ("There is simply no dependency relation between this ICSID Tribunal's main findings on Webuild's treaty claims, the Republic's international liability, and the domestic decision of an Argentine court regarding Puentes del Litoral's contract claims under Argentine law- they are simply based on different instruments, legal regimes, and standards of treatment.")
[60] Claimant's Response, ¶ 11.
[61] *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, 20 August 2007, ¶ 7.3.10, **CL-0009**.
[62] *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award, Aug. 27, 2009, ¶ 139, **CL-0236**.
[63] Claimant's Response, ¶ 14.

rendered by the tribunal.[64] Webuild adds that for a fact to decisively affect the outcome it must be "some development (such as a relevant and controlling judgment or award)."[65] None of the requirements are met according to Webuild, due to the following:

65. The Local Judgment is not a new fact that decisively affects the outcome of this case considering that (i) the parties in the proceedings are different, and Webuild "is neither the plaintiff nor the respondent" in the PdL Case; (ii) Webuild filed "no evidence and pursued no rights" in the PdL Case.[66]

66. The facts between both cases differ as one was an administrative lawsuit and the other one is based under a bilateral investment treaty. The Claimant argues it has proved that (i) Webuild is an investor covered by the BIT; (ii) it made a qualified investment in Argentina; (iii) it had legitimate expectations; and (iv) Argentina breached its treaty obligations.[67] Thus, it states that despite "*some* commonality of facts" between the claims, "very little - other than gross incompetence and judicial impropriety- can explain how an independent court" can reach to a conclusion that is the opposite to that of the Tribunal.[68]

67. This Tribunal has already considered the Parties' different positions on the key facts the Respondent highlights in its Request for Reconsideration regarding the Emergency Law, Puentes del Litoral's failure to obtain financing, and the Concession Contract's termination.[69] Therefore, the decision reached in the Local Judgment alone "is self-serving and not dispositive",[70] and even if the Contentious Administrative Court found that Puentes del Litoral was in contractual breach, the PdL Judgment "does not defeat or in any way alter either Webuild's legitimate expectations as to rebalancing or the ultimate conclusion of breach."[71]

68. Finally on this matter, Webuild asserts that Argentina relies on seven cases to supposedly justify revision of the Decision on Liability; however, it notes that only in one case, namely,

[64] Claimant's Response, ¶ 15, relying on *Landesbank*, ¶ 35, **CL-0255**.
[65] Claimant's Response, ¶ 15; citing *Landesbank*, ¶ 41, **CL-0255**.
[66] Claimant's Response, ¶ 17.
[67] Claimant's Response, ¶ 18.
[68] Claimant's Response, ¶ 19.
[69] Claimant's Surrebuttal, ¶¶ 20-23.
[70] Claimant's Response, ¶ 20.
[71] Claimant's Response, ¶ 21.

Standard Chartered, did the tribunal grant a reconsideration request due to an exceptional circumstance *i.e.*, a party concealed information from the tribunal.[72] The Claimant adds that the other six were decided contrary to what the Respondent suggests.

69. Further, Webuild states that the Tribunal owes no deference to the Local Judgment as it is not controlling, binding, or determinative. Based on *Cavalum,* it argues that "a subsequent legal authority is not enough by itself to warrant reconsideration", and instead it must be shown that the new legal authority "not only undermines the Tribunal's legal conclusion but shows that it was wholly wrong."[73]

70. For instance, the Claimant alleges that in *Cavalum* and *Landesbank*, the tribunals held respectively that (i) "the new CJEU judgment did not add new reasoning that the tribunal had not already considered in its pre-award decision",[74] and (ii) as the arbitration is held under the ICSID Convention and it is not seated in any State "the reasoning in the two Swedish cases is therefore inapplicable."[75] Webuild applies both decisions to this case and concludes that the "Tribunal found that the termination of the contract itself under domestic law does not affect its main liability determination under the BIT that Argentina failed to provide FET."[76]

71. Also, Webuild addresses the *Azinian* case cited by the Respondent and states that Argentina fails to mention that the tribunal in said case concluded that "an international tribunal called upon to rule on a Government's compliance with an international treaty is not paralysed by the fact that the national courts have approved the relevant conduct of public officials."[77] It adds as well that Webuild's claim differs from *Azinian's,* as in the latter the investors claimed an expropriation of their investments, which the Tribunal itself considered unnecessary to analyse.[78] Moreover, the claimants in *Azinian* "did not challenge the judicial decisions validating that conduct in the arbitration (even though these decisions had been issued before the arbitration)".[79] Thus, the Claimant contends that the PdL

[72] Claimant's Surrebuttal, ¶ 11.
[73] Claimant's Response, ¶ 23, citing *Cavalum*, ¶¶ 80-81, **AL RA-406**.
[74] Claimant's Response, ¶ 23.
[75] Claimant's Response, ¶ 24, citing *Landesbank*, ¶ 47, **CL-0255**.
[76] Claimant's Response, ¶ 25.
[77] Claimant's Response, ¶ 28, citing *Azinian*, ¶ 92, **AL RA-201**.
[78] Claimant's Response, ¶ 28.
[79] Claimant's Surrebuttal, ¶ 9.

Judgment has no impact on the Tribunal's determination, and that this proceeding "is not paralyzed by the fact that the national courts have approved under the relevant conduct of public officials" as decided by the tribunal in the mentioned case.[80]

72. In the fourth place, the Claimant addresses the possible annulment of the arbitral award raised by Argentina in case the Tribunal fails to "assess the application of Argentine law in light of the findings of the local Judgment."[81] Webuild states that this *threat* to the Tribunal has no grounds considering that the Tribunal "in accordance with the BIT and international law, discerned when and how to apply the BIT, international law and Argentine law- and having done so to resolve the dispute does not equate with exceeding its power."[82] The Claimant asserts that (i) the Tribunal "has not failed to apply the applicable law"; (ii) under the ICSID Convention, annulment is not an appellate procedure, and the correctness of a tribunal's reasoning, either factual or legal, is not subject to annulment; (iii) the Local Judgment is not the law in the Argentine Republic, rather it is "merely a first instance judgment"; and (iv) the Tribunal's tasks differ from those of an annulment committee.[83]

73. Finally, the Claimant relies on *Perenco v. Ecuador* to assert that "a tribunal equally cannot, in a phased arbitration, hold the sword of Damocles above its head and second-guess itself as to whether it has manifestly exceeded its powers, seriously departed from a fundamental rule of procedure, and so on" and to the contrary, "when deciding a claim, a tribunal should avoid taking on the role of simultaneously acting as if it were an annulment committee sitting in judgment of its own work."[84]

74. For all the reasons set forth, Webuild requests the Tribunal to reject the Request for Reconsideration, with costs, and urges the Tribunal to proceed to prompt issuance of the final award.

[80] Claimant's Surrebuttal, ¶ 10; citing *Azinian*, ¶ 98, **AL RA-201**.
[81] Claimant's Response, ¶ 29.
[82] Claimant's Response, ¶ 29.
[83] Claimant's Response, ¶ 29.
[84] Claimant's Response, ¶ 29, citing *Perenco*, ¶ 33, **CL-0256**.

III. THE TRIBUNAL'S ANALYSIS

75. The Tribunal recognizes that the Parties disagree as to the extent of its authority to reconsider its Decision on Liability, with the Respondent arguing that Article 44 of the ICSID Convention gives inherent power to the Tribunal to review pre-award decisions, in situations analogous to those provided for in Article 51 of the ICSID Convention;[85] and the Claimant contending that in accordance with the international law principle of *res judicata,* the Tribunal does not have the power to reopen and wholesale reconsider its Decision on Liability.[86] The Tribunal sees no need to address this issue in detail, as even under the standards put forward by the Respondent, it considers that there is insufficient basis to justify such reconsideration.

76. The Tribunal concurs with the Claimant when it observes that Webuild's claims under the BIT are independent and distinct from the contractual claims asserted by Puentes del Litoral in local courts. It further concurs that the cause of action was different, the claim in the local proceedings was brought by a different party, and the only applicable law was domestic law.[87] Here, in contrast, the cause of action arose under the BIT, the claim was not brought by PdL but by the Claimant, and FET is an obligation under the BIT.

77. While Argentina is correct that the BIT's Article 8(7) cites to domestic law as one of the sources of applicable law, it is not the sole source; rather, the BIT also requires application of the treaty (the "**Agreement**") itself, along with applicable principles of international law. The Tribunal's decision on FET is grounded in the Agreement and principles of international law, but also took into account the provisions of the Concession Contract, the various representations made by the Respondent to the Claimant after cancellation of the Contract, and local law, and was cognizant of the local proceeding.

78. The Tribunal understands that the Claimant was involuntarily joined to the local proceeding at the request of the Respondent. This also militates in the Tribunal's view against finding the decision as *res judicata.*

[85] Request for Reconsideration, ¶¶ 21-25; and Respondent's Reply, ¶¶ 3-7 and citations therein.
[86] Claimant's Response, ¶¶ 8-13; Claimant's Surrebuttal, ¶ 2 and citations therein.
[87] *See* ¶ 51, *supra*.

79. The previous findings or decisions of this Tribunal cited by Argentina do not compel a different result, but must be considered in their particular context.

80. Argentina refers to the Tribunal's citation in its Decision on Liability to a 2008 ruling of the Argentine Commercial Court, that PdL's reorganization proceeding was not an obstacle to continued renegotiation of the Concession Contract, as a "persuasive element".[88] But this citation goes to an issue that Argentine law clearly governs—namely, the existence of a duty to renegotiate in light of the economic emergency. It has no relevance to the present issue.

81. Next, the Respondent invokes the Tribunal's reliance in the jurisdictional phase of this case on PdL's submission of the dispute to the local courts for the purpose of satisfying the jurisdictional requirement of Article 8 of the BIT. That was, however, a different case than the one that produced the PdL Judgment, namely, an administrative complaint initiated by PdL which was ultimately closed based on the non-response of the Argentine authorities.[89] The Tribunal agrees with the Claimant that such reliance for the purpose of determining compliance with the jurisdictional requirements of Article 8 does not mean that the PdL Judgment should control the ultimate decision on liability. A requirement that a dispute be submitted to local courts for a period of time in many cases will imply a submission of the same dispute to local law. There is thus nothing in that prior determination, including the fact that it was brought by PdL, that requires that this Tribunal be bound as to the merits of an issue of state responsibility by a subsequent local judgment.

82. Respondent also raises the *Hochtief* Decision, leading to a debate between the Parties about similarities or differences between the evidentiary records in the two cases.[90] The Tribunal extensively considered the *Hochtief* Decision in its Decision on Liability, along with evaluating the evidence before it, and sees no basis in the Request for Reconsideration for reopening that discussion.

83. The Tribunal appreciates that the judgment of the Federal Court for Administrative-Contentious Matters No 8 that issued the PdL Judgment is a competent local court in the

[88] Request for Reconsideration, ¶ 20, citing Decision on Liability, ¶ 258.
[89] *See* Claimant's Surrebuttal, ¶ 8 and citations therein.
[90] *See* ¶¶ 28, and 43-44, *supra*. *See also* Respondent's Reply, ¶ 60, and Claimant's Surrebuttal, ¶ 15.

matter. It finds no basis for the Claimant's suggestion that the local court acted improperly.[91] But even if the parties to that case were identical to the Parties in the present proceeding (which they are not),[92] and factual overlap undoubtedly is present, the standard of decision for this Tribunal –charged with determining whether an FET violation has occurred based on the BIT and international law, rather than Argentine law--is far different.

84. The Tribunal has reviewed the PdL Judgment carefully and considers that it contains nothing in its analysis that requires reconsideration of its prior decision. In particular, in the Decision on Liability the Tribunal considered Argentina's argument that under the terms of the Concession Contract, termination was an automatic consequence of PdL's dissolution and liquidation, and found it not dispositive for the reasons expressed in the Decision on Liability.[93] It is of course open to the Argentine courts to rule differently, just as it is open to this Tribunal to do so, given the difference in governing standards. That the outcomes may differ as a result does not make them necessarily inconsistent.

85. The Respondent notes, correctly, that the Tribunal considered that the primary legitimate expectation of the Claimant was grounded in the Concession Contract, and argues that the Claimant could not have a legitimate expectation that the State would act contrary to the law governing the Concession Contract.[94] The expectation in question, fortified and confirmed by Argentine law and the State's conduct and specific representations in the wake of the Emergency Law, was that the equilibrium of the Concession Contract, fundamentally altered by measures in the Emergency Law, would be re-established within a reasonable time. The Tribunal found that the State failed to do so, and engaged in a course of conduct over a prolonged period of time, beginning in 2006, which effectively strangled PdL economically and made its failure and ultimate dissolution inevitable.[95]

86. The Tribunal took into account in its analysis the financial difficulties of PdL prior to the emergency measures, finding that PdL's conduct justified some allocation of contributory

[91] The Tribunal considers the Claimant's disparaging remarks vis-à-vis that court both unnecessary and inappropriate.
[92] The fact that Claimant was joined involuntarily at the request of Argentina to the proceedings before the Federal Court for Administrative-Contentious matters does not create such identity, in the Tribunal's view.
[93] Decision on Liability, ¶ 266.
[94] Request for Reconsideration, ¶ 14.
[95] Decision on Liability, ¶¶256-267.

fault in relation to the quantum of damages, to be assessed in the Tribunal's pending Award.[96]

87. The Tribunal's previous rejection of Argentina's stay request in favor of the local proceedings, and the dismissal of the Respondent's *forum non conveniens* objection[97]--which was based on the same lawsuit that ultimately has given rise to the PdL Judgment--also underscores the distinctness of standards governing decisions in the local and international proceedings.

88. None of the legal authorities cited by the Respondent compels a different outcome. The Respondent places particular reliance on the *Azinian* case,[98] in which a tribunal had to address the termination of a waste treatment contract by a municipal government after that decision was declared lawful by the local courts. There, of course, the decision of local courts regarding the contract in question preceded the termination, and the claimants did not challenge the decision of the courts. Not surprisingly, therefore, the tribunal held that

> [e]ven if the Claimants were to convince this Arbitral tribunal that the Mexican courts were wrong with respect to the invalidity of the Concession Contract, this would not per se be conclusive as to a violation of [the treaty]. More is required; the Claimants must show either a denial of justice, or a pretence of form to achieve an internationally lawful end…."[99]

89. The Tribunal notes that the claim before the tribunal in *Azinian* was an expropriation claim, with the sole measure cited as the basis for that claim being the contract's annulment.[100] As noted above, that is not the case here. The Tribunal agrees with the statement of the tribunal in *Azinian* that "an international tribunal called upon to rule on a Government's compliance with an international treaty is not paralysed by the fact that the national courts have approved the relevant conduct of local officials."[101]

[96] Decision on Liability, ¶368.
[97] Decision on Jurisdiction, ¶ 173.
[98] *Azinian*, **AL RA-201**.
[99] *Azinian,* ¶ 99, **AL RA-201** cited in Request for Reconsideration, ¶ 15. *See* also Respondent's Reply, ¶ 7.
[100] Claimant's Surrebuttal, ¶ 9, citing *Azinian,* ¶ 97, **AL RA-201**.
[101] *Azinian,* ¶ 98, cited in Claimant's Surrebuttal, ¶ 10, **AL RA-201**.

90. Other tribunals considering new information, and in particular new legal authorities, have established that "a subsequent legal authority is not enough by itself to warrant reconsideration, but it must be a decisive legal authority".[102]

91. For the reasons set forth above, the Tribunal concludes that the PdL judgment is not a decisive legal authority for purposes of its application of the Treaty, that in any event the relevant facts and circumstances have been taken into account in its Decision on Liability, and that any divergence between its Decision on Liability and the PdL Judgment is a consequence of the different standards which apply. It therefore declines to reconsider its Decision on Liability and denies the Request for Reconsideration.

92. Regarding the Claimant's request for costs in relation to the Request for Reconsideration, considering the outcome of the present Decision and the principle that costs follow the event, the Tribunal considers that the legal fees incurred by the Claimant in responding to the Request for Reconsideration should be borne by the Respondent. It therefore directs the Claimant to submit to the Tribunal, within fifteen (15) days of this Decision, a supplemental submission with respect to its legal costs associated with responding to the Request. The Award to be rendered in these proceedings will include an order with respect to the costs determination reflected in this Decision.

IV. DECISION

93. For the reasons stated above, the Tribunal hereby decides, as follows:

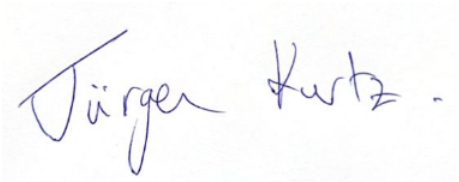
(1) The Request for Reconsideration is denied;

(2) The Claimant's legal costs incurred in responding to the Request shall be borne by the Respondent;

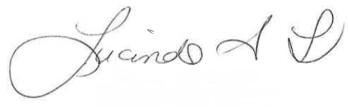
Within fifteen (15) days of the date hereof, the Claimant shall submit to the Tribunal a supplemental statement of the costs covered by subparagraph (2) above.

[102] *Landesbank*, **CL-255**; and *Cavalum*, ¶¶ 80-81, **AL RA 406**.

Professor Kaj Hobér
Arbitrator



Professor Jürgen Kurtz
Arbitrator



Ms. Lucinda A. Low
President of the Tribunal