INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

OI European Group B.V.

v.

Bolivarian Republic of Venezuela

(ICSID Case No. ARB/11/25) – Annulment Proceeding

DECISION ON STAY OF ENFORCEMENT OF THE AWARD

Members of the Committee
Álvaro Castellanos Howell, President of the Committee
Piero Bernardini, Member of the Committee
David Pawlak, Member of the Committee

Secretary of the Committee
Sara Marzal Yetano, ICSID

April 4, 2016

1. This decision is issued on the request of the Bolivarian Republic of Venezuela ("Venezuela" or "the Applicant") to stay the enforcement of the Award rendered on March 10, 2015 (the "Award") pending the annulment proceeding in the case *OI European Group B.V. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/11/25).

2. After recalling the procedural history (I), and summarizing the parties' positions (II), the *ad hoc* Committee will present its analysis (III) and decision (IV).

I. PROCEDURAL HISTORY

3. On July 7, 2015, Venezuela filed with the Secretary General of ICSID an application for the annulment of the Award in the present case (the "Application for Annulment"). Venezuela's Application for Annulment included a request under ICSID Convention Article 52(5) for a stay of enforcement of the Award, pending a decision by the Committee to be constituted on the Application for Annulment.

4. The Application for Annulment is based on the grounds that: (a) the Tribunal was not properly constituted (ICSID Convention Article 52(1)(a)); (b) the Tribunal manifestly exceeded its powers (ICSID Convention Article 52(1)(b)); (c) there was a serious departure from a fundamental rule of procedure (ICSID Convention Article 52(1)(d)); and (d) the Award failed to state the reasons on which it is based (ICSID Convention Article 52(1)(e)).

5. On July 17, 2015, the Secretary-General of ICSID registered the Application for Annulment and at the same time notified the parties that enforcement of the Award was provisionally stayed, pursuant to ICSID Arbitration Rule 54(2).

6. On October 13, 2015, the *ad hoc* Committee was constituted in accordance with ICSID Convention Article 52(3). Its members are: Dr. Álvaro Castellanos Howell (Guatemalan) President, designated to the ICSID Panel of Arbitrators by the Republic of Guatemala; Prof. Piero Bernardini (Italian), designated to the ICSID Panel of Arbitrators by the Italian Republic, and Mr. David Pawlak (American and Irish), designated to the ICSID Panel of Arbitrators by the Slovak Republic; all members were appointed by the Chairman of ICSID's Administrative Council. On that same date, OI European Group B.V. (the "Respondent on Annulment" or "OI") and the Applicant (together, the "Parties") were duly informed of the commencement of the annulment proceeding.

7. On October 14, 2015, OI sent a letter noting that the Applicant bears the burden of specifying the circumstances that require the continuation of the stay of enforcement and that it had failed to provide any type of justification for its request in its Application for Annulment. On this basis, Respondent on Annulment argued that the stay of enforcement should be discontinued or allowed to terminate automatically within 30 days of the constitution of the *ad hoc* Committee.

8. On October 26, 2015, pursuant to the schedule determined by the *ad hoc* Committee, as subsequently amended by the Parties, the Applicant filed a first submission in

support of its request to maintain the stay of enforcement (the Applicant's "First Submission"); on November 12, 2015, the Respondent on Annulment filed observations on Applicant's first submission (the Respondent on Annulment's "Observations"); on November 25, 2015, the Applicant filed a second submission on the stay of enforcement of the Award (the Applicant's "Reply"); and on December 8, 2015, the Respondent on Annulment filed its rejoinder (the Respondent on Annulment's "Rejoinder").

9. By letter dated October 27, 2015, the *ad hoc* Committee notified the Parties that, as contemplated by Arbitration Rule 54(2), the *ad hoc* Committee decided to maintain the provisional stay on the enforcement of the Award until it has had an opportunity to review the Parties' submissions and to issue a further decision on the matter.

10. On December 9, 2015, the *ad hoc* Committee held its first session. Given that the Parties had not agreed to hold the first session on any of the dates proposed by the *ad hoc* Committee within the 60-day period envisaged in ICSID Arbitration Rule 13, and had not agreed to extend such 60-day period, as permitted by ICSID Arbitration Rule 13, the *ad hoc* Committee held its first session without the Parties by teleconference.

11. On December 15, 2015, the *ad hoc* Committee issued Procedural Order No. 1.

12. On December 20, 2015, the *ad hoc* Committee notified the Parties that the *ad hoc* Committee deemed that two rounds of written submissions provided ample opportunity for the Parties to present their observations on the issue of the stay of enforcement, and declined the Applicant's request for an additional round of oral submissions.

13. On March 2, 2016, the *ad hoc* Committee informed the Parties by e-mail that, in accordance with Section 16.5 of Procedural Order No.1, it had decided not to consider the Respondent on Annulment's letter of February 26, 2016, and requested the Parties to abstain from presenting further unsolicited submissions, consistent with the *ad hoc* Committee's direction in its letter of October 27, 2015.

II. THE POSITION OF THE PARTIES ON THE STAY OF ENFORCEMENT

14. The following is a summary of the Parties' positions on the stay of enforcement of the Award.[1]

A. The Applicant's position

15. The Applicant requests the continuation of the stay of enforcement of the Award until the *ad hoc* Committee renders a decision on the Application for Annulment.

16. As a preliminary matter, the Applicant states that under the ICSID Convention the obligations and responsibilities of *ad hoc* committees do not include ensuring

[1] This summary does not intend to be a detailed and exhaustive description of all of the Parties' arguments. Its objective is merely to establish the general context for this decision.

compliance with the decision they issue.[2] The Applicant argues that this has been acknowledged in a number of cases, citing *El Paso v. Argentina* and *MINE v. Guinea*.[3] For the Applicant, it is on this basis that the specific rules on the stay of enforcement of awards should be interpreted.[4]

17. Contrary to what the Respondent on Annulment argued in its October 14, 2015 letter, the Applicant contends that, according to ICSID Arbitration Rules 54(2) second sentence and 54(4), OI has the burden of proving the circumstances that would justify the lifting of the stay of enforcement of the Award, since it was OI who first challenged the provisional stay granted by the Secretary-General.[5] The Applicant considers that OI has not been able –and is not able– to prove any of the circumstances that would justify the exceptional and burdensome termination of the stay of the enforcement of the Award and that therefore the *ad hoc* Committee should reject OI's request *in limine*.[6]

18. Furthermore, citing the decisions issued in *Elsamex v. Honduras*, *Occidental v. Ecuador*, *Venezuela Holdings v. Venezuela* and *Victor Pey Casado v. Chile*,[7] among others, the Applicant contends that there is an unquestionable trend in the decisions of prior *ad hoc* committees to maintain the stay of enforcement of awards, to the point where it would become "almost automatic," unless the party requesting the termination proved exceptional circumstances.[8]

19. The Applicant sustains that in the present case there is no reason or circumstance authorizing the *ad hoc* Committee to terminate the stay of enforcement. In particular, the Applicant asserts that: (i) there is no risk of non-compliance by Venezuela of the Award in the event it is not annulled, and, in addition, such failure to honor the Award should not be presumed; (ii) there is a risk that Venezuela will not be able to duly recover its funds if the stay is terminated; (iii) the Application for Annulment is not dilatory; (iv) terminating the stay of enforcement of the Award would cause significant

[2] Applicant's First Submission, ¶ 27. Applicant's Reply, ¶¶ 24, 98-101.
[3] Applicant's First Submission, footnote 18. Applicant's Reply, footnote 34, ¶¶ 99-100. *El Paso Energy International Company v. Argentine Republic*, ICSID Case No ARB/03/15, Decision on the Stay of the Enforcement of the Award (14 November 2012) [hereinafter *El Paso v. Argentina*, Decision on Stay]; *Maritime International Nominees Establishment (MINE) v. Republic of Guinea*, ICSID Case No. ARB/84/4, Interim Order No. 1 Guinea's Application for Stay of Enforcement of the Award (12 August 1988) [hereinafter *MINE v. Guinea*, Decision on Stay].
[4] Applicant's First Submission, ¶ 27.
[5] Applicant's First Submission, ¶¶ 7-9. Applicant's Reply, ¶¶ 5-9.
[6] Applicant's Reply, ¶¶ 10.
[7] *Elsamex, S.A. v. Republic of Honduras*, ICSID Case No. ARB/09/4, Decision on the Continuation of the Stay of Enforcement (7 January 2014) [hereinafter *Elsamex v. Honduras*, Decision on Stay]; *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on the Stay of Enforcement of the Award (30 December 2013) [hereinafter *Occidental v. Ecuador*, Decision on Stay]; *Venezuela Holdings B.V. and others v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Procedural Order No. 2 (28 July 2015), *Víctor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Decision on the Republic of Chile's Application for a Stay of Enforcement of the Award (5 May 2010) [hereinafter *Víctor Pey Casado v. Chile*, Decision on Stay].
[8] Applicant's Reply, ¶¶ 13-23. See also Applicant's First Submission, ¶¶ 26-36.

and irreparable damage to Venezuela; and (v) OI would not be prejudiced if the stay of enforcement of the Award continues pending a decision on the annulment.

20. Furthermore, the Applicant (vi) rejects OI's request that the *ad hoc* Committee require Venezuela to provide a security as a condition to the maintenance of the stay. According to the Applicant, the *ad hoc* Committee should reject this request, not only because the ICSID Convention does not grant this power to *ad hoc* committees, but also because, even if they had the power, the present case does not fulfill the requirements necessary to grant such a measure.

21. The following is a brief summary of the Applicant's arguments justifying each one of these assertions.

i. There is no risk of non-compliance by Venezuela with the Award in the event it is not annulled, and, in addition, such failure to honor the Award should not be presumed

22. The Applicant cites *S.S. Wimbledon*[9] to argue that international tribunals cannot base their decisions on presumptions that States will not comply with their international obligations.[10]

23. The Applicant stresses that Venezuela has fully and constantly complied with its international obligations, despite economic difficulties,[11] and points out that Venezuela has recently paid an amount in excess of USD 5.2 billion in connection with PDVSA (Petróleos de Venezuela, S.A.) bonds.[12] The Applicant also asserts that Venezuela has never failed to comply with any obligation under the ICSID Convention and has repeatedly affirmed that it will continue complying with it.[13]

24. The Applicant rejects the list of "factors" that OI identifies to justify the alleged risk of non-compliance of the Award. Among other things, the Applicant argues that the statements made in 2012 by late President, Mr. Hugo Chavez—and quoted by OI to prove that Venezuela will not comply with the Award—are cited out of context, since such statements were clearly made in connection with the denunciation of the ICSID Convention that was taking place at that time. Also, the Applicant notes that under international law unilateral statements of officials cannot generate international obligations for States unless made with clear intention to bind the State. The statements made by Mr. Chavez were of a political nature, not legal statements, and subsequent events show that Venezuela has never failed to comply with the ICSID Convention.[14]

25. The Applicant also rejects OI's argument that Venezuela has avoided compliance with every single arbitral award recently rendered against it under the ICSID Convention or the ICSID Additional Facility Rules. For the Applicant, contrary to what is argued by OI, the fact that Venezuela has initiated annulment proceedings and interpretation or

[9] *SS 'Wimbledon', United Kingdom and ors v Germany*, Judgment, (1923) PCIJ Series A no 1, ICGJ 235 (PCIJ 1923), 17th August 1923.
[10] Applicant's First Submission, ¶ 37. Applicant's Reply, ¶ 26.
[11] Applicant's First Submission, ¶ 38. Applicant's Reply, ¶ 26.
[12] Applicant's Reply, ¶ 27.
[13] Applicant's Reply, ¶ 26.
[14] Applicant's Reply, ¶ 29.

revision proceedings in relation to such awards, as well as the fact that certain investors have initiated local proceedings for the enforcement of awards against Venezuela, do not imply that Venezuela is refusing to comply with such awards. The Applicant notes that exactly the opposite is true: resorting to post-award proceedings in accordance with the ICSID Convention is a confirmation of Venezuela's willingness to follow the ICSID Convention. Furthermore, the Applicant contends that the existence of enforcement proceedings outside Venezuela cannot be attributed to the latter and, in any event, is irrelevant for the purpose of deciding on the stay of enforcement of the Award in the present case.[15]

26. The Applicant further argues that the denunciation of the ICSID Convention is also irrelevant for the present purposes and cannot be interpreted as an indication of non-compliance. On the contrary, for the Applicant, the fact that Venezuela denounced the ICSID Convention in 2012 and nevertheless continues to follow all existing proceedings under the Convention is strong evidence to certify Venezuela's strict compliance with its international obligations.[16]

27. Additionally, the Applicant rejects OI's argument regarding Venezuela's failure to make advance payments in certain proceedings. For the Applicant, the relevant issue is that in the present case Venezuela has never failed to comply with any of its payment obligations. In the other cases cited by OI, Venezuela has stated the reasons for which it discontinued advance payments and such reasons have nothing to do with this case. In any event, according to the Applicant, compliance with advance payment requests is an issue related to the distribution of costs included in the calculations of amounts payable by the parties upon termination of the proceeding and not related to the termination of the stay.[17]

28. Finally, the Applicant also responds to OI's argument that the local courts in Venezuela have confirmed that its domestic laws do not comply with the ICSID Convention provisions regarding the finality of awards. The Applicant contends that, on the contrary, the position of Venezuelan courts clearly shows that Venezuela is committed to complying with awards in the terms of ICSID Convention Articles 53(1) and 54(3).[18] Furthermore, according to the Applicant, "to date there is no award under the ICSID Convention whose enforcement was attempted in Venezuela and that could not be enforced therein."[19]

[15] Applicant's Reply, ¶¶ 30-36.
[16] Applicant's Reply, ¶ 38.
[17] Applicant's Reply, ¶¶ 39-40.
[18] Applicant's Reply, ¶¶ 42-52.
[19] Applicant's Reply, ¶ 47.

ii. There is a risk that Venezuela will not be able to duly recover its funds if the stay is terminated

29. The Applicant states that *ad hoc* committees have held that a significant factor in favor of maintaining the stay of enforcement is the difficulty for the respondent State to recover the amount paid under an award if it is later annulled.[20] In support of this contention, the Applicant cites the decisions of the *CMS v. Argentina*, *Enron v. Argentina* and *El Paso v. Argentina ad hoc* committees.[21]

30. In this sense, the Applicant claims that Venezuela would be forced to incur significant legal costs in order to recover the payments.[22] Furthermore, the Applicant argues that there is a possibility that a third party might seize any amount paid under the Award, thus making it impossible for Venezuela to recover such amount should the Award be annulled.[23]

31. In response to OI's statements regarding the creditworthiness of its group of companies, Applicant points out that OI has not provided any evidence proving such creditworthiness and that, in any event, the financial position relevant in this case is OI's, not that of the entire group of companies. Additionally, Applicant notes that OI could simply cease to form part of the business group to which it currently belongs.[24]

iii. The Application for Annulment is not dilatory

32. The Applicant rejects OI's argument that the Application for Annulment is dilatory and stresses that the *ad hoc* Committee should not analyze the merits at this stage of the proceeding.[25] The Applicant recognizes that the dilatory nature of an application for annulment is a relevant factor for the *ad hoc* Committee to decide on the stay of enforcement. However, the Applicant argues that the analysis of the dilatory nature of such application must not imply an analysis on the merits.[26] For the Applicant, the standard applicable is "extremely high" since the dilatory nature of the application must be "manifest," that is, the application itself "must contain irrefutable evidence of its manifest abuse, that it was filed for the sole purpose of postponing enforcement and that it is not based on the grounds set forth in the Convention."[27]

[20] Applicant's First Submission, ¶¶ 18-20.
[21] Applicant's First Submission, ¶¶ 18-20. *CMS Gas Transmission Company v. Argentine Republic*. ICSID Case No. ARB/01/8, Decision on the Argentine Republic's Request for a Continued Stay of Enforcement of the Award (1 September 2006) [hereinafter *CMS v. Argentina*, Decision on Stay]; *Enron Corp. & Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No ARB/01/3, Decision on the Argentine Republic's Request for a Continued Stay of Enforcement of the Award (7 October 2008) [hereinafter, *Enron v. Argentina*, Decision on Stay] and *El Paso v. Argentina*,
[22] Applicant's First Submission, ¶ 21.
[23] Applicant's First Submission, ¶ 22.
[24] Applicant's Reply, ¶ 55.
[25] Applicant's First Submission, ¶¶ 40, 44-49.
[26] Applicant's Reply, ¶¶ 57-61. Applicant's First Submission, ¶ 44.
[27] Applicant's Reply, ¶¶ 62-66.

33. The Applicant contends that this extremely high standard has not been met in this case since OI has not invoked any elements allowing the *ad hoc* Committee to determine whether the Application for Annulment is of a dilatory nature without conducting an in-depth analysis of its merits.

34. Furthermore, the Applicant claims that its Application for Annulment is lawful and substantiated, containing rigorous support for each one of the multiple grounds for annulment, each of them discussed in full adherence to the ICSID Convention.[28]

35. Finally, the Applicant also responds to OI's argument regarding Venezuela's so called "dilatory tactics" in other arbitral proceedings, arguing that all the examples cited by OI constitute the lawful and legitimate exercise of the rights established in the ICSID Convention and its Arbitration Rules, which therefore cannot constitute a "pattern" of dilatory behavior. Moreover, the Applicant states that simply pointing out the unsuccessful outcome of some of those examples is utterly insufficient to constitute such a pattern.[29]

iv. Terminating the stay of enforcement of the Award would cause significant and irreparable damage to Venezuela

36. The Applicant states that the termination of the stay of enforcement of the Award would cause irreparable harm to Venezuela since it would be required to divert a significant amount of the public funds for the payment of the Award. For the Applicant, this means that a series of basic services provided by the State to its population (such as health, education, and housing) would be left with less funding.[30]

37. The Applicant also points out that the termination of the stay would force Venezuela to incur significant legal costs to defend itself against OI's attempt to enforce the Award while the annulment proceeding is still pending.[31]

38. According to the Applicant, the irreparable harm risk is clear because "there are several grounds for nullity duly justified in the Application" and the Award "is highly likely" to be annulled."[32] Additionally, a State – as opposed to a private company – will not be able to cure the damage suffered by charging interest and, therefore, the risks affecting Venezuela are not comparable to the risks alleged by OI.[33]

39. Finally, the Applicant contends that OI's argument regarding the amount of compensation due under the Award, as compared to Venezuela's gross domestic product, contradicts OI's argument regarding the risk of non-compliance with the Award. For the Applicant, OI's invocation of this argument amounts to recognizing that Venezuela is creditworthy enough to comply with the Award.[34]

[28] Applicant's Reply, ¶¶ 70-77.
[29] Applicant's Reply, ¶¶ 78-83.
[30] Applicant's First Submission, ¶¶ 12-13.
[31] Applicant's First Submission, ¶ 12.
[32] Applicant's Reply, ¶¶ 85, 87.
[33] Applicant's Reply, ¶¶ 88, 89.
[34] Applicant's Reply, ¶ 91.

v. OI would not be prejudiced if the stay of enforcement of the Award continues pending a decision on the annulment

40. The Applicant argues that the maintenance of the stay would not cause any actual, certain or real damage to OI since the time elapsed between the rendering of the Award and the actual payment of any awarded amount—if the Award is not annulled—would be covered by interest due to OI in accordance with the challenged Award.[35] In support of this argument, the Applicant cites the decisions by the *ad hoc* committees in *Víctor Pey Casado v. Chile* and in *Azurix v. Argentina*.[36]

vi. The ad hoc Committee should reject OI's request to condition the continuation of the stay on the posting of a security

41. The Applicant argues that, in contrast to the New York Convention, the ICSID Convention does not include a provision expressly authorizing *ad hoc* committees to condition the stay of the enforcement of an award on the posting of security by the party that submitted the application for annulment.[37] In support of this argument, the Applicant cites the *ad hoc* committee's decision in *Azurix v. Argentina.*[38] Additionally, the Applicant also rejects that such power can be implicitly derived from the ICSID Convention and Arbitration Rules and rejects that there is a "*jurisprudence constante*" on the matter, as alleged by OI.[39]

42. Citing *Libananco v. Turkey*,[40] the Applicant contends that the *ad hoc* Committee does not have the power to recommend the posting of a guarantee as a provisional measure either, since such power is only vested in arbitral tribunals, but not *ad hoc* committees. In this regard, the Applicant highlights the fact that ICSID Convention Article 47 is not included in the list of provisions that, according to ICSID Convention Article 52(4), are applicable *mutatis mutandis* to annulment proceedings.[41]

43. Even if the *ad hoc* Committee were to consider that it has jurisdiction to condition the stay on the posting of a security, the Applicant claims that OI has not met the burden of alleging and proving the minimum requirements that must be satisfied for a provisional measure to be granted in this case. On the contrary, the Applicant states that it has been shown that there is no need or urgency to recommend that a security be posted and that the adoption of such measure would not help to prevent any irreparable harm to OI. In fact, the Applicant contends that Venezuela would be the one suffering

[35] Applicant's First Submission, ¶¶ 23-25. Applicant's Reply, ¶¶ 92-95.
[36] Applicant's Reply, ¶¶ 93-94. *Víctor Pey Casado v. Chile*, Decision on Stay and *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Decision on the Continued Stay of Enforcement of the Award (28 December 2007) [hereinafter, *Azurix v. Argentina*, Decision on Stay].
[37] Applicant's Reply, ¶¶ 102-104.
[38] *Azurix v. Argentina*, Decision on Stay.
[39] Applicant's Reply, ¶¶ 106-109.
[40] *Libananco Holdings Co. Limited v. Republic of Turkey*, ICSID Case No. ARB/06/8, Decision on Applicant's Request for Provisional Measures (7 May 2012) [hereinafter, *Libananco v. Turkey*, Decision on Stay].
[41] Applicant's Reply, ¶¶ 110-123.

irreparable harm since it would have to incur in significant costs in order to provide such security.[42]

44. Furthermore, for the Applicant, the posting of a bond would unfairly place OI in a better position than that it enjoyed prior to the Application for Annulment, thus worsening the situation for Venezuela.[43] In this regard, the Applicant cites the decisions issued by the *ad hoc* committees in *Patrick Mitchell v. the Democratic Republic of the Congo*, *MINE v. Guinea* and *Víctor Pey Casado v. Chile*.[44]

B. The Respondent on Annulment's Position

45. The Respondent on Annulment argues that the ordinary meaning of ICSID Convention Article 52(5) and ICSID Arbitration Rule 54(2) confirms that specific circumstances must exist that require the stay of enforcement. In the absence of such circumstances, the *ad hoc* Committee should not stay the enforcement of the Award pending its decision on annulment. Citing several previous *ad hoc* committees, such as *SGS v. Paraguay*, *Sempra v. Argentina*, and *Víctor Pey Casado v. Chile*,[45] among others, OI contends that a continued stay of enforcement is the exception rather than the rule – which in OI's view is consistent with the extraordinary nature of the annulment remedy.[46]

46. For the Respondent on Annulment, it is the party requesting the continuation of a provisional stay who bears the burden of demonstrating that there are specific circumstances that require its continuation.[47] In support of its position, the Respondent on Annulment cites Professor Schreuer's commentary as well as the decisions of the *ad hoc* committees in *SGS v. Paraguay*, *Kardassoupoulos v. Georgia*, *Víctor Pey Casado v. Chile*, *Vivendi v. Argentina (Vivendi II)* among others.[48] The Respondent on Annulment also points out that its position on the burden of proof is consistent with the

[42] Applicant's Reply, ¶¶ 124-140.
[43] Applicant's Reply, ¶¶ 141-146.
[44] Applicant's Reply, ¶¶ 141-143. *Patrick Mitchell v. Democratic Republic of Congo,* ICSID Case No. ARB/99/7, Decision on the Stay of Enforcement of the Award (November 30, 2004), [hereinafter, *Patrick Mitchell v. Democratic Republic of Congo*, Decision on Stay]; *Víctor Pey Casado v. Chile*, Decision on Stay; *MINE v. Guinea*, Decision on Stay.
[45] *SGS Société Générale de Surveillance S.A. v. The Republic of Paraguay*, ICSID Case No. ARB/07/29, Decision on Paraguay's Request for the Continued Stay of Enforcement of the Award (22 March 2013) [hereinafter *SGS v. Paraguay*, Decision on Stay]; *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Decision on the Argentine's Republic's Request for a Continued Stay of Enforcement of the Award (5 March 2009) [hereinafter *Sempra v. Argentina*, Decision on Stay]; *Víctor Pey Casado v. Chile*, Decision on Stay.
[46] Respondent on Annulment's Observations, ¶¶ 16-25.
[47] Respondent on Annulment's Observations, ¶¶ 27-37. Respondent on Annulment's Rejoinder, ¶¶ 12-40.
[48] *SGS v. Paraguay*, Decision on Stay, *Ioannis Kardassopoulos and Ron Fuchs v. Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Decision of the ad hoc Committee on the Stay of Enforcement of the Award (12 November 2010) [hereinafter *Kardassopoulos v. Georgia*, Decision on Stay]; *Víctor Pey Casado v. Chile*, Decision on Stay, *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Decision on the Argentine's Republic's Request for a Continued Stay of Enforcement of the Award rendered on 20 August 2007 (4 November 2008).

ad hoc Committee's decision regarding the timetable for the Parties' submissions on this issue.[49]

47. The Respondent on Annulment rejects the Applicant's argument that there is a trend in the decisions of prior *ad hoc* committees to maintain the stay of enforcement of awards, to the point where it would become "almost automatic." According to OI, the Applicant wrongfully bases its argument solely on the outcome of the decisions on provisional stays of enforcement in other cases, without scrutinizing the circumstances that led to those outcomes and without taking into consideration that in many instances the continuation of the stay was conditioned on the applicant furnishing a security or a guarantee of compliance with the award.[50]

48. The Respondent on Annulment contends that the Applicant has established none of the five factors that previous *ad hoc* committees have taken into account when deciding whether to continue the stay. In particular, OI argues that the Applicant has failed to prove: (i) the absence of circumstances indicating that there is a risk of non-compliance with the Award; (ii) the absence of circumstances indicating that its attempt to annul the Award and its request to maintain the stay merely seek to delay the enforcement of the Award; (iii) the lack of prospects for recoupment of the relevant payment if the Award is subsequently annulled; (iv) that lifting the stay of enforcement would have "catastrophic consequences" for it; and (v) the lack of prejudice to the Respondent on Annulment that would result from the Applicant's delayed compliance with the Award. Even assuming *arguendo* that circumstances justifying a continuation of the provisional stay did exist, the Respondent on Annulment contends that (vi) such continuation should be conditioned on the provision of a bond or security by the Applicant.

49. The following is a brief summary of the Respondent on Annulment's arguments in support of each of these assertions.

i. There is a substantial risk of non-compliance with the Award by the Applicant

50. Contrary to what is argued by the Applicant, the Respondent on Annulment contends that the risk of non-compliance by the Applicant with the Award is a crucial factor in deciding on the Applicant's request.[51] According to OI, this is supported by prevalent annulment decisions, such as *Sempra v. Argentina* and *CMS v. Argentina*.[52]

51. The Respondent on Annulment argues that there is a very real prospect of the Applicant not complying voluntarily with the Award and points to a list of factors that illustrate this risk. Among others factors, the Respondent on Annulment refers to certain statements made in 2012 by the former President of Venezuela, Mr. Hugo Chavez, that

[49] Respondent on Annulment's Observations, ¶ 38. Respondent on Annulment's Rejoinder, ¶¶ 19-22.
[50] Respondent on Annulment's Observations, ¶ 23.
[51] Respondent on Annulment's Observations, ¶¶ 43-44. Respondent on Annulment's Rejoinder, ¶¶ 59-66.
[52] *Sempra v. Argentina*, Decision on Stay; *CMS v. Argentina*, Decision on Stay.

would allegedly indicate that the Applicant does not intend to comply with the ICSID Convention.[53]

52. Contrary to what is argued by the Applicant, OI contends that these statements are legally binding and cannot be dismissed as merely political in nature, as confirmed by the *Nuclear Tests* case, as well as *CMS v. Argentina*.[54] Further, in response to the Applicant's argument that such statements were made in connection with the denunciation of the ICSID Convention, the Respondent on Annulment notes that some of the declarations by Mr. Chavez were made after such denunciation.[55]

53. The Respondent on Annulment also points out that Venezuela has initiated annulment proceedings and interpretation or revision proceedings against all of the awards rendered against it in recent years under the ICSID Convention or the ICSID Additional Facility Rules. For the Respondent on Annulment, this factor, coupled with the fact that the claimants in at least three of such arbitral proceedings have had to initiate enforcement proceedings in various jurisdictions, implies that the Applicant does not intend to honor the Award.[56]

54. Additionally, the Respondent on Annulment refers to the 2012 letter from the Applicant signed by the current President Maduro denouncing the ICSID Convention. Respondent on Annulment contends that such letter contained an open and vocal attack on the ICSID system which further indicates a substantial risk of non-compliance with the Award.[57]

55. Citing *SGS v. Paraguay*,[58] the Respondent on Annulment contends that another factor that would illustrate the risk of non-compliance is the Applicant's systematic refusal to make advance payments in a whole category of arbitration cases "on the basis of its own self-serving interpretation of the ICSID Convention and in clear violation of the principle *pacta sunt servanda*."[59]

56. Furthermore, the Respondent on Annulment asserts that the Applicant's courts have repeatedly concluded that decisions of international courts and tribunals, such as ICSID awards, can be subjected to judicial review and that they cannot be enforced in Venezuela if the Applicant's courts consider that such awards are contrary to the Venezuelan Constitution.[60] For the Respondent on Annulment, these domestic court rulings, in violation of the provisions regarding the finality, recognition and enforcement of ICSID awards contained in ICSID Convention Articles 53 and 54, indicate a risk of non-compliance with the Award, as confirmed by a number of

[53] Respondent on Annulment's Observations, ¶¶ 48-50.
[54] Respondent on Annulment's Rejoinder, ¶¶ 76, 79-86. *CMS v. Argentina*, Decision on Stay.
[55] Respondent on Annulment's Rejoinder, ¶ 77.
[56] Respondent on Annulment's Observations, ¶¶ 52-53. Respondent on Annulment's Rejoinder, ¶¶ 87-90.
[57] Respondent on Annulment's Observations, ¶ 54. Respondent on Annulment's Rejoinder, ¶¶ 91-92.
[58] *SGS v. Paraguay*, Decision on Stay.
[59] Respondent on Annulment's Observations, ¶¶ 55-59. Respondent on Annulment's Rejoinder, ¶¶ 93-97.
[60] Respondent on Annulment's Observations, ¶¶ 63-80. Respondent on Annulment's Rejoinder, ¶¶ 99-108.

annulment committees, such as the *ad hoc* committees in *Kardassopoulos v. Georgia* and *Occidental v. Ecuador*.[61]

57. Finally, the Respondent on Annulment refers to indicia of the Applicant's taking measures to shield its assets in foreign jurisdictions from enforcement proceedings.[62] As examples, the Respondent on Annulment refers to press reports regarding Venezuela's gold reserves and its oil-refining corporation in the United States, Citgo Petroleum Corporation.[63] For the Respondent on Annulment, this is another factor that should be taken into account by the *ad hoc* Committee in deciding on the stay of enforcement, as confirmed by the *ad hoc* committee in *Azurix v. Argentina*.[64]

ii. The Application for Annulment and the accompanying stay of enforcement request are dilatory

58. Citing *Víctor Pey Casado v. Chile*, *Patrick Mitchell v. Congo* and *Libananco v. Turkey*, the Respondent on Annulment asserts that the dilatory nature of the Application for Annulment is highly relevant to the *ad hoc* Committee's decision on whether to continue the stay of enforcement.[65]

59. The Respondent on Annulment rejects the "excessively high threshold"[66] argued by the Applicant and contends that dilatory applications are those "that are 'manifestly abusive,' 'made for an improper purpose' or based on a pretext while in fact primarily intended to delay the proceedings."[67] For the Respondent on Annulment, this is not an exhaustive test. Rather, the *ad hoc* Committee must look at the totality of evidence before it and consider all relevant circumstances when making its decision.[68]

60. To prove the dilatory nature of the Application for Annulment, the Respondent on Annulment first contends that the Applicant has deliberately embarked on a dilatory strategy in other ICSID or ICSID Additional Facility proceedings. In this regard, the Respondent on Annulment asserts that the Applicant has not voluntarily complied with at least five of the awards recently rendered against it but, instead, has initiated post-award proceedings seeking to stay the enforcement and thus further delay the payment of compensation.[69] Furthermore, the Respondent on Annulment notes that in the last six years the Applicant has requested the disqualification of an arbitrator in either ICSID or ICSID Additional Facility proceedings on no less than nineteen (19) occasions.[70]

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[61] *Kardassopoulos v. Georgia*, Decision on Stay*; Occidental v. Ecuador*, Decision on Stay.
[62] Respondent on Annulment's Observations, ¶ 81.
[63] Respondent on Annulment's Rejoinder, ¶¶ 112-114.
[64] Respondent on Annulment's Rejoinder, ¶¶ 110-111. *Azurix v. Argentina*, Decision on Stay.
[65] Respondent on Annulment's Observations, ¶¶ 83-84. *Víctor Pey Casado v. Chile*, Decision on Stay; *Patrick Mitchell v. Congo*, Decision on Stay; and *Libananco v. Turkey*, Decision on Stay.
[66] Respondent on Annulment's Rejoinder, ¶ 139.
[67] Respondent on Annulment's Rejoinder, ¶ 138.
[68] Respondent on Annulment's Rejoinder, 8 December 2015, ¶ 138.
[69] Respondent on Annulment's Observations, ¶¶ 92-96. Respondent on Annulment's Rejoinder, ¶¶ 142-143.
[70] Respondent on Annulment's Observations, ¶ 98. Respondent on Annulment's Rejoinder, ¶¶ 144-145.

61. The Respondent on Annulment argues that this "pattern of behavior" is relevant for the *ad hoc* Committee's decision on the stay of enforcement.[71] Also, according to the Respondent on Annulment, Venezuela's conduct is motivated by the fact that, due to its poor credit rating, it is "much cheaper for the Applicant to avoid having to pay for the investments that it expropriates for as long as possible rather than attempting to secure credit from lending institutions or friendly States."[72]

62. Additionally, the Respondent on Annulment contends that even a cursory review of the Applicant's Request for Annulment and the request to lift the stay of enforcement makes it clear that none of the grounds invoked by the Applicant can be taken seriously.[73]

iii. The recoupment of any payment by the Applicant in satisfaction of the Award (if the Award is subsequently annulled) is guaranteed

63. The Respondent on Annulment argues that there is absolutely no risk that the Applicant would be unable to recoup any payment it makes to OI, in the unlikely event that the Applicant succeeds in its Application for Annulment. The Respondent on Annulment maintains that it has conducted itself throughout the proceedings as a model litigant who has abided by all procedural obligations. The Respondent on Annulment stresses that, more importantly, it is a member of a corporate group with market capitalization of several billions of US dollars.[74]

64. In response to the Applicant's arguments on this issue, the Respondent on Annulment maintains that it has adduced factual evidence that demonstrate the vast solvency and liquidity of the corporate group of which it is a member. Additionally, the Respondent on Annulment contends that the Applicant's arguments regarding the possibility of the group's funds being affected by acts of a third party and regarding the group's continued creditworthiness in the future are mere speculations.[75]

65. Further, the Respondent on Annulment notes that the *ad hoc* Committee could address any recoupment concerns by conditioning the continuation of the stay on the Applicant's paying the sum into an escrow account and empowering the escrow agent to release the funds to OI if, and only if, the *ad hoc* Committee rejects the Application for Annulment.[76]

iv. The termination of the stay would not cause irreparable prejudice or have "catastrophic consequences" for the Applicant

66. The Respondent on Annulment rejects the Applicant's argument that the termination of the stay would cause irreparable harm because it would force Venezuela to direct public

[71] Respondent on Annulment's Rejoinder, ¶ 141.
[72] Respondent on Annulment's Observations, ¶ 85.
[73] Respondent on Annulment's Observations, ¶¶ 86-91. Respondent on Annulment's Rejoinder, ¶¶ 147-156.
[74] Respondent on Annulment's Observations, ¶ 102.
[75] Respondent on Annulment's Rejoinder, ¶ 44.
[76] Respondent on Annulment's Observations, ¶ 103. Respondent on Annulment's Rejoinder, ¶ 43.

funds towards the payment of the Award instead of towards other public matters. For the Respondent on Annulment, this argument is not supported by any case law and is contrary to the obligation of a State that has committed an internationally wrongful act to make reparation.[77]

67. Furthermore, the Respondent on Annulment contends that, even if the Applicant's argument is interpreted as a claim that the satisfaction of the Award would lead to "catastrophic consequences," such a claim would also not be supported by the case law. In that regard, the Respondent on Annulment points out that in *CDC v. Seychelles* the *ad hoc* committee held that the perpetration of catastrophic consequences upon the award debtor by the lifting of the stay of enforcement of the award was a relevant consideration, but noted that specific evidence and data must be supplied to substantiate such claim.[78]

68. The Respondent on Annulment contends that the Applicant's argument must also be rejected for practical reasons. For OI, it is a truism that a State debtor in an ICSID arbitration will pay compensation out of public funds that could be used for another purpose – that alone, given it is true of every case, cannot provide a basis on which a stay of enforcement is continued.[79]

69. Further, the Respondent on Annulment notes that the Applicant has had the benefit of the expropriated plants for more than five years, and has taken for itself the hundreds of millions of dollars of profits they have generated during that time. Additionally, the Respondent on Annulment points out that the Applicant has repeatedly promised to pay the compensation that was due, and therefore cannot now maintain that it would suffer prejudice by paying.[80]

70. Finally, given that the sum that the Tribunal ordered to be paid is only 0.09% of the Applicant's official gross domestic product for 2014, the Respondent on Annulment argues that no catastrophic consequences will flow from its paying the requisite sum of compensation immediately.[81] In reply to the Applicant's contention that this argument is contradictory with OI's approach in this case, the Respondent on Annulment points out that it has never maintained that the Applicant is soon to become insolvent. Rather, the Respondent on Annulment's position is that the Applicant will not comply voluntarily with the Award, has limited assets abroad and has a growing list of creditors pursuing those assets.[82]

[77] Respondent on Annulment's Observations, ¶ 105. Respondent on Annulment, ¶¶ 47-52.
[78] Respondent on Annulment's Observations, ¶¶ 106-107. *CDC Group PLC v. Republic of the Seychelles*, ICSID Case No. ARB/02/14, Decision on Whether or Not to Continue Stay and Order (14 July 2004) [hereinafter, *CDC v. Seychelles*, Decision on Stay].
[79] Respondent on Annulment's Observations, ¶ 108.
[80] Respondent on Annulment's Observations, ¶ 111.
[81] Respondent on Annulment's Observations, ¶¶ 108-113.
[82] Respondent on Annulment's Rejoinder, ¶ 53.

v. The Respondent on Annulment would suffer significant prejudice if the stay of enforcement were allowed to continue

71. The Respondent on Annulment argues that further delaying the payment of the Award is in and of itself a prejudice sufficient to warrant the discontinuance of the stay. However, the Respondent on Annulment contends that this prejudice increases manifold due to the consequences that the delay has in this case.[83] In this regard, the Respondent on Annulment notes that a continuation of the stay would force OI "backwards in the queue of creditors that are seeking to enforce international awards against the Applicant's assets."[84] Further, the Respondent on Annulment contends that "the pool of assets against which the multiple awards might be enforced is limited and dwindling and therefore every day of delay directly reduces the likelihood of OI being able to enforce the Award.[85]

72. According to the Respondent on Annulment, this prejudice cannot be offset by post-award interest and, in any event, OI's entitlement to post-award interest should not be a relevant consideration in the *ad hoc* Committee's analysis on the stay of enforcement, as confirmed by the *ad hoc* committees in *Kardassopoulos v. Georgia* and *Sempra v. Argentina*.[86]

vi. If the provisional stay is not terminated, its continuation should be conditioned on the provision of a bond or security by the Applicant

73. The Respondent on Annulment argues that if the *ad hoc* Committee decides to maintain the stay of enforcement in this case, it should do so only upon the provision by the Applicant of a financial security from which the Respondent on Annulment can obtain full satisfaction of the Award if the Application for Annulment is rejected. That security should consist of a deposit in an escrow account covering the full amount of the Award, and the corresponding interest until the date of the deposit. Alternatively, the Respondent on Annulment contends that the Applicant should furnish an unconditional and irrevocable first demand bank guarantee issued by a solvent and reputable international bank (with no principal establishment in the Bolivarian Republic of Venezuela and acceptable to the Respondent on Annulment) for the total amount of the Award plus the corresponding interest accrued up to the date the guarantee is issued.[87]

74. The Respondent on Annulment contends that the power to condition the stay of enforcement on the provision of a bond or security is implicitly contained in ICSID Convention Article 52(5) as confirmed by ample case law.[88] In support of this, the

[83] Respondent on Annulment's Observations, ¶ 116.
[84] Respondent on Annulment's Observations, ¶¶ 117.
[85] Respondent on Annulment's Observations, ¶ 117. Respondent on Annulment's Rejoinder, ¶¶ 116-127
[86] Respondent on Annulment's Observations, ¶¶ 118-122. Respondent on Annulment's Rejoinder, ¶ 126. *Kardassopoulos v. Georgia*, Decision on Stay and *Sempra v. Argentina*, Decision on Stay.
[87] Respondent on Annulment's Observations, ¶ 131. Respondent on Annulment's Rejoinder, ¶ 174.
[88] Respondent on Annulment's Observations, ¶¶ 126-130 and 132-133. Respondent on Annulment's Rejoinder, ¶¶ 161-163.

Respondent on Annulment cites *Enron v. Argentina*, *Libananco v. Turkey*, *Sempra v. Argentina*, *Repsol v. Ecuador*, *Kardassoupolos v. Georgia*, *Lemire v. Ukraine* and *Adem Dogan v. Turkmenistan*, among others.[89]

75. Furthermore, the Respondent on Annulment maintains that there are no "special circumstances" in this case that would militate against the posting of a security by the Applicant, and that the main elements that have led previous annulment committees to require the posting of a security are all present in this case.[90]

76. Citing Professor Schreuer's commentary and the *ad hoc* committees in *Wena Hotels v. Egypt* and *CDC v. Seychelles*,[91] the Respondent on Annulment argues that conditioning the stay of enforcement on the provision of a security would be an appropriate way of balancing the rights of the Parties in this case.[92]

77. In response to the Applicant's provisional measures arguments, the Respondent on Annulment contends that such arguments are "inconsequential and irrelevant to the present dispute" given that at no stage in the present exchange of pleadings has OI requested provisional measures.[93]

78. Contrary to the Applicant's claims, the Respondent on Annulment contends that conditioning the provisional stay on the provision of a security or bond would not place the Respondent on Annulment in a better position than the one in which it currently finds itself. In this regard, the Respondent on Annulment argues that a condition of security would merely balance the benefit the Applicant would enjoy if granted a stay of enforcement. Further, OI maintains that the posting of security is a suitable safeguard in the present case, where there are strong indications that the Applicant will not voluntarily comply with the Award. Finally, the Respondent on Annulment also notes that, in the circumstances, the posting of security would counter-balance the detriment caused to it by the delay created by a stay. [94]

III. ANALYSIS OF THE *AD HOC* COMMITTEE

79. The Parties have had a full opportunity to be heard and the *ad hoc* Committee is adequately prepared to render this Decision.

80. Pursuant to ICSID Convention Article 53, arbitral awards are final and binding. According to such Article, an award "shall be binding on the parties;" it "shall not be subject to any appeal or to any other remedy except for those provided for in th[e]

[89] *Enron v. Argentina*, Decision on Stay; *Libananco v. Turkey*, Decision on Stay; *Sempra v. Argentina*, Decision on Stay; *Repsol YPF Ecuador, S.A. v. Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case No. ARB/01/10, Procedural Order No. 1 (22 December 2005); *Kardassopoulos v. Georgia*, Decision on Stay; *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Annulment (16 July 2013); *Adem Dogan v. Turkmenistan*, ICSID Case No. ARB/09/9, Decision on Stay of Enforcement (24 November 2014).
[90] Respondent on Annulment's Observations, ¶ 134.
[91] Respondent on Annulment's Rejoinder, ¶¶ 182-183. *CDC v. Seychelles*, Decision on Stay.
[92] Respondent on Annulment's Observations, ¶¶ 139-146.
[93] Respondent on Annulment, ¶¶ 164 and 166-173.
[94] Respondent on Annulment's Rejoinder, ¶¶ 165 and 176-208.

Convention;" and the parties "shall abide and comply with the terms of the award except to the extent that the enforcement shall have been stayed."

81. Notwithstanding the finality and binding nature of an award rendered under the ICSID Convention and the ICSID Arbitration Rules, a party to an arbitration under said Convention has the right to request annulment of the award, but only under the specific grounds provided for in ICSID Convention Article 52. A request for annulment is a fundamental right which is an integral part of the ICSID system.

82. The grounds contemplated in ICSID Convention Article 52 characterize a request for annulment as an exceptional remedy; therefore, it does not constitute an appeal or a means to request the review of the merits of the case. ICSID Convention Article 53(1) is categorical: "The award shall be binding on the parties **and shall not be subject to any appeal** or to any other remedy except those provided for in this Convention…" (highlighted text by the *ad hoc* Committee).

83. The Parties do not dispute the principles of finality and the binding nature of an award and the exceptional nature of the annulment mechanism. These principles derive from ICSID Convention Articles 52 and 53, and, as such, must be considered in the interpretation and application of the provisions related to the issue of the stay of enforcement.[95]

84. The rules regarding the stay of enforcement of an award are contained, in particular, in ICSID Convention Article 52 and ICSID Arbitration Rule 54, and are reproduced in pertinent part as follows.

85. ICSID Convention Article 52(5) provides:

> The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.

86. ICSID Arbitration Rule 54 provides:

> Stay of Enforcement of the Award
>
> (1) The party applying for the interpretation, revision or annulment of an award may in its application, and either party may at any time before the final disposition of the application, request a stay in the enforcement of part or all of the award to which the application relates. The Tribunal or *ad hoc* Committee shall give priority to the consideration of such a request.
>
> (2) If an application for the revision or annulment of an award contains a request for a stay of its enforcement, the Secretary-General shall, together with the notice of registration, inform both parties of the provisional stay of the award. As soon as the Tribunal or *ad hoc* Committee is constituted it

[95] Vienna Convention on the Law of Treaties, Article 31.

> shall, if either party requests, rule within 30 days on whether such stay should be continued; unless it decides to continue the stay, it shall automatically be terminated.
>
> (3) If a stay of enforcement has been granted pursuant to paragraph (1) or continued pursuant to paragraph (2), the Tribunal or *ad hoc* Committee may at any time modify or terminate the stay at the request of either party. All stays shall automatically terminate on the date on which a final decision is rendered on the application, except that a *ad hoc* Committee granting the partial annulment of an award may order the temporary stay of enforcement of the unannulled portion in order to give either party an opportunity to request any new Tribunal constituted pursuant to Article 52(6) of the Convention to grant a stay pursuant to Rule 55(3).
>
> (4) A request pursuant to paragraph (1), (2) (second sentence) or (3) shall specify the circumstances that require the stay or its modification or termination. A request shall only be granted after the Tribunal or *ad hoc* Committee has given each party an opportunity of presenting its observations.
>
> (5) The Secretary-General shall promptly notify both parties of the stay of enforcement of any award and of the modification or termination of such a stay, which shall become effective on the date on which he dispatches such notification.

87. Under ICSID Convention Article 52(5), an *ad hoc* committee's decision to continue a stay depends on whether "it considers that the circumstances so require." The ICSID Convention provides no further specification or guidance regarding the circumstances or criteria that are relevant to the *ad hoc* committee's determination, or the relative weight to be given to such circumstances. Rather, as further addressed immediately below, the determination regarding the stay is left to the discretion of the *ad hoc* committee.

88. The *ad hoc* committee in *Libananco v. Turkey* determined that:

> The exercise of the discretion of the Committee depends on the circumstances surrounding the Stay Request and, therefore, the granting of a stay of enforcement or its continuation should in no way be regarded as automatic. The Committee is aware that some *ad hoc* annulment committees have considered that, 'absent unusual circumstances, the granting of a stay of enforcement pending the outcome of the annulment proceedings has now become almost automatic'. However, this does not follow from the ICSID Convention or the Arbitration Rules, and the Committee considers that its decision should be based on an assessment of all relevant circumstances.[96]

[96] *Libananco v. Turkey*, Decision on Stay, ¶ 43.

89. The *ad hoc* Committee in the instant case agrees with the reasoning cited in the preceding paragraph. The aforementioned provisions of the ICSID Convention and the ICSID Arbitration Rules lead this *ad hoc* Committee to a fundamental conclusion, set forth at the outset, that the continuation of the stay of enforcement in the ICSID system is far from automatic. ICSID Convention Article 52(5) provides that the stay shall continue if an *ad hoc* committee considers that "the circumstances so require." Said article does not use other less categorical verbs, such as "recommend," "deserve," "justify" or similar words, but resorts to the imperative verb "require."[97] And the expression "if it considers" leaves wide discretion to an *ad hoc* committee to evaluate, case by case, if those circumstances are present or not, in order to continue a stay of enforcement, notwithstanding the binding and final nature of the awards.

90. The *ad hoc* committee in *Kardassopoulos v. Georgia* indicated:

> Consonant with the extraordinary nature of the annulment remedy, the stay of enforcement is an exception to the ICSID enforcement regime. Stay of enforcement during the annulment proceeding is by no way automatic, quite to the contrary, a stay is contingent upon the existence of relevant circumstances which must be proven by the [party requesting the stay].[98]

91. The above reasoning is in conformity with decisions of other *ad hoc* committees. For example, the *ad hoc* committee in *Sempra v. Argentina* held that:

> Against that background, the view of the present Committee as to the prerequisites for granting a stay can be summarized as follows. An ICSID award is immediately payable by the award debtor, irrespective of whether annulment is sought or not. A stay of enforcement should not in any event be automatic, and there should not even be a presumption in favour of granting a stay of enforcement. This follows, in the Committee´s opinion, from the ordinary meaning to be given to the terms of Article 52(4)(sic) of the ICSID Convention, which authorizes the Committee to stay enforcement of the award pending its decision ´if it considers that the circumstances so require´. Although the ICSID Convention does not give any indication as to what circumstances would warrant a stay, it is nonetheless clear from this language that there must be some circumstances present that speak in favour of granting a stay. As a consequence, it cannot be assumed that there should be a presumption in favour of a stay or that the primary burden is placed on the award creditor to show that continuation of the stay should not be granted.[99]

92. The *ad hoc* Committee now addresses the issue of burden of proof. The Applicant claims that, unless the Respondent on Annulment proves that there are exceptional circumstances that require lifting the provisional stay, such stay should be

[97] Respondent on Annulment's Rejoinder, ¶ 15.
[98] *Kardassopoulos v. Georgia*, Decision on Stay, ¶ 26.
[99] *Sempra v. Argentina*, Decision on Stay, ¶ 27.

maintained.[100] The Respondent on Annulment argues that the Applicant is wrong.[101] The Applicant argues that the Respondent on Annulment's letter of 14 October 2015 is a request under Arbitration Rules 54(2) second sentence, to which Arbitration Rule 54(4) makes reference, so that it is the Respondent on Annulment that has to prove the circumstances requiring termination of the stay since it first challenged the provisional stay.[102]

93. The *ad hoc* Committee does not accept the position asserted by the Applicant. That is why, on 15 October 2015, the *ad hoc* Committee requested Venezuela to present its written arguments in favor of the continuation of the stay of enforcement no later than 26 October 2015. After such first submission of 26 October 2015, the Respondent on Annulment filed its Observations on the Applicant's Request for Continuation of the Stay of Enforcement, of 12 November 2015; then, the Applicant's Reply of 25 November 2015 was presented to the *ad hoc* Committee, and finally, the Respondent on Annulment submitted its Rejoinder on the Stay of Enforcement, of 8 December 2015.

94. The *ad hoc* Committee proceeded to organize such rounds of submissions because, in its opinion, in order to decide on the continuation of the stay of enforcement of the Award, the *ad hoc* Committee has to be fully satisfied that the circumstances of the particular case so require. The *ad hoc* Committee, therefore, based on the preceding statements and the relevant provisions of ICSID regime governing stays of enforcement, finds that it is for the party seeking the continuation of the stay to show that such circumstances exist, and thus, that the stay of enforcement of the Award should be continued. The Applicant bears the burden of proof that there are circumstances in the instant case that, in the discretion of this *ad hoc* Committee, require the continuation of the stay of enforcement.

95. As described in paragraph 19 above, the Applicant asserts in particular that: (i) there is no risk of non-compliance by Venezuela with the Award in the event it is not annulled, and, in addition, such failure to honor the Award should not be presumed; (ii) there is a risk that Venezuela will not be able to duly recover its funds if the stay is terminated; (iii) the Application for Annulment is not dilatory; (iv) terminating the stay of enforcement of the Award would cause significant and irreparable damage to Venezuela; and (v) OI would not be prejudiced if the stay of enforcement of the Award continues pending a decision on the annulment. Each Party has addressed these circumstances in its respective submissions to the *ad hoc* Committee.[103]

96. Accordingly, in the subsections that follow the *ad hoc* Committee undertakes a concise review, one by one, of the circumstances argued by Applicant in this case, in order to determine whether the Applicant has met its burden of proof, such that the continuation of the stay of enforcement is required. As a matter of clarification, the *ad hoc* Committee recognizes that the Applicant addressed those circumstances as grounds

[100] Applicant's First Submission, ¶¶ 7-9. Applicant's Reply, ¶¶ 5-9.
[101] Respondent on Annulment's Rejoinder, ¶ 8.
[102] See ¶ 17 of this Decision.
[103] See, for example, Section II (B), (C), (D), (F) and Section III of the Applicant's First Submission; and ¶ 40 of the Respondent on Annulment's Observations.

that, in its view, provide no basis for the *ad hoc* Committee to terminate the stay of enforcement. But this *ad hoc* Committee has already stated that the burden of proof resides with the Applicant to demonstrate that there are circumstances that require, at the discretion of this *ad hoc* Committee, the continuation of the stay of enforcement, and not the contrary.

i. Risk of non-compliance

97. The Applicant suggested in its First Submission that the *ad hoc* Committee should not take into account the existence of a risk of non-compliance with the Award when deciding whether to lift the stay of enforcement.[104] Furthermore, the Applicant asserts that the *ad hoc* Committee should not doubt that Venezuela will comply with the Award given its policy of strict compliance with all of its international obligations.[105]

98. This *ad hoc* Committee agrees with the Respondent on Annulment that the risk of non-compliance by the Applicant with the Award is a relevant circumstance in deciding on the Applicant's request for the continuation of the stay of enforcement. In this regard, the Respondent on Annulment relies on prior decisions regarding the issue of stay of enforcement, such as in *Sempra v. Argentina* and *CMS v. Argentina*.[106]

99. The Respondent on Annulment states in both its initial Observations and its Rejoinder that as regards the existence of a substantial risk of the Applicant's non-compliance with the Award, there are at least eight factors that illustrate such risk. It devotes many pages in both its Observations and Rejoinder to address these factors.[107]

100. Such eight factors are:

i) The Applicant did not reply to the Respondent on Annulment's letter requesting it to comply with the Award;

ii) The Applicant's own high ranking officials have expressly stated that the Applicant will not comply with ICSID decisions or with the ICSID Convention;

iii) The Applicant has avoided compliance with every recent arbitral award rendered against it under the ICSID Convention and the ICSID Additional Facility Rules;

iv) The Applicant has openly and vociferously attacked the ICSID system;

v) The Applicant has failed to comply with its ICSID-related payment obligations in numerous cases;

[104] Applicant's First Submission, ¶ 37.
[105] Applicant's First Submission, ¶ 38.
[106] Respondent on Annulment's Observations, ¶¶ 43, 44.
[107] Respondent on Annulment's Rejoinder, ¶¶ 58-115; Respondent on Annulment's Observations, ¶¶ 43-82.

vi) The Applicant has raised arguments in the enforcement proceedings initiated by the Respondent on Annulment in the United States that further confirm the Applicant's unwillingness to comply with the Award;

vii) The Applicant's domestic legal system is contrary to ICSID Convention Articles 53 and 54;

viii) The Applicant is taking measures to shield its assets from enforcement proceedings in foreign jurisdictions.

101. The Applicant stated in its Reply that "none of the speculations or fallacies invoked by OI to cast doubts on the Republic's willingness to comply with the Award are admissible. There is no risk for OI that the Republic will fail to comply with the Award in the unlikely event that the Award is not annulled by the *ad hoc* Committee."[108]

102. Notwithstanding such conclusion on the part of the Applicant, this *ad hoc* Committee does not agree that the factors argued by the Respondent on Annulment shall simply be taken as fallacies and speculations. It is not for the *ad hoc* Committee, as correctly argued by the Applicant, to assume or presume that the Award in the instant case will not be fulfilled. But that is not to say that the *ad hoc* Committee shall not direct its attention to the factors that could raise reasonable concerns in connection with compliance with the ICSID Convention, and as stated before, in particular, its Articles 53 and 54.

103. After careful analysis of the arguments presented by the Applicant, particularly those emphasized in its Reply, the *ad hoc* Committee takes the view that the evidence with respect to some of these factors pose a question of risk of non-compliance with the Award. The *ad hoc* Committee is concerned specifically about factors ii), iv) and vii) in connection with the fulfillment of ICSID Convention Articles 53 and 54. As regards the Respondent on Annulment's factor ii)[109] ("*the Applicant's own high ranking officials have expressly stated that the Applicant's will not comply with ICSID decisions or with the ICSID Convention*"), the *ad hoc* Committee notes that other annulment committees have taken statements of State officials into account when assessing the likelihood of future compliance with awards by the State. In *CMS v. Argentina*, the *ad hoc* committee considered statements made by former Ministers of Justice and Finance of Argentina to the effect that adverse ICSID awards would be subject to the review by the Argentine Supreme Court in contravention of ICSID Convention Article 54.[110]

104. Moreover, the *ad hoc* Committee is persuaded, as argued by the Respondent on Annulment in its Rejoinder, that, contrary to what the Applicant states, it is well established under public international law that statements of high-ranking governmental officials, especially, a Head of State, are legally binding. The *ad hoc*

[108] Applicant's Reply, ¶ 54.
[109] See ¶¶ 51-52 above.
[110] *CMS v. Argentina*, Decision on Stay, ¶¶ 46-47.

Committee finds the judgments of the International Court of Justice cited by the Respondent on Annulment to be particularly pertinent.[111]

105. In connection with factor iv) ("*the Applicant has openly attacked the ICSID system*"), the *ad hoc* Committee has noted that, as mentioned by the Respondent on Annulment, the Applicant's letter denouncing the ICSID Convention states that "the provisions of the [ICSID] Convention have become unconstitutional under Venezuelan law." More than that, the *ad hoc* Committee considers of particular relevance, in the present context, the reference made in said letter to the fact, also mentioned by Respondent on Annulment, that ICSID is a "biased" institution favouring companies and private entities to the detriment of the sovereign States.[112] Such letter is Exhibit RA-08.[113]

106. Even if only one of a number of arguments explaining the decision to denounce the ICSID Convention, the gravity of this accusation raises concerns in regard to the prospects of compliance by the Applicant with ICSID Convention Articles 53 and 54 should the Award not be annulled, considering that under ICSID Convention Article 72, the State's obligations (as well as its rights) are not affected by its denunciation.

107. Finally, regarding the factor presented by the Respondent on Annulment under item vii) (*"the Applicant's domestic legal system is contrary to Articles 53 and 54 of the ICSID Convention")* above, the *ad hoc* Committee cannot find any evidence in the record supporting the fulfillment of an ICSID award in Venezuela, as argued by the Applicant. To the contrary, some of the aspects underlying this factor vii) are supported by the evidence. The Applicant itself made reference to a decision of the Constitutional Chamber of the Supreme Court of Justice of 2008 that appears in the file under OI-17B, which is a decision that confirms that the conditions for arbitration provided by a treaty have to be "not contrary to the Constitution." That same decision states at its page 24 that the Constitutional Chamber of the Supreme Court of Justice of Venezuela may "confirm and enlarge upon the considerations made in Decision No. 1942/03," which also appears in the record under Exhibit OI-14.[114]

108. Accordingly, in connection with the three factors addressed above, the Respondent on Annulment has shown valid grounds for concerns for this *ad hoc* Committee about the

[111] Respondent on Annulment's Rejoinder, ¶¶ 80, 81, and footnotes 84, 85, 86.
[112] Respondent on Annulment's Rejoinder, ¶ 91.
[113] The third paragraph of the letter states: "*La piedra angular de este profundo proceso de devolución de soberanía al pueblo de la República Bolivariana de Venezuela, fue la aprobación mediante referéndum popular de la Constitución de 1999, la cual en su Artículo 151 reza que en los contratos de interés público, si no fuera improcedente de acuerdo con la naturaleza de los mismos, se considerará incorporada, aun cuando no estuviere expresa, una cláusula según la cual las dudas y controversias que puedan suscitarse sobre dichos contratos y que no llegaren a ser resueltas amigablemente por las partes contratantes, serán decididas por los tribunales competentes de la República, de conformidad con sus leyes, sin que por ningún motivo ni causa puedan dar origen a reclamaciones extranjeras, con lo cual las disposiciones del mencionado Convenio [del CIADI] cayeron en el dominio de la inconstitucionalidad."* (Emphasis added by this *ad hoc* Committee).
[114] "*Although it is a decision issued in a single-instance proceeding, not subject to appeal and binding on the parties, which must fully comply with it (Article 53 [of the ICSID Convention]), the enforcement in the Contracting State is carried out in accordance with the norms of that State. Therefore, this Chamber considers that a decision that violates the Constitution of the Bolivarian Republic of Venezuela would be unenforceable in the country. This could give rise to an international claim against the State, but the decision would be unenforceable in the country, in this case, Venezuela.*" Cited in Respondent on Annulment's Rejoinder, ¶103.

validity and binding nature of ICSID awards in Venezuela, under ICSID Convention Articles 53 and 54, and the Applicant, in turn, has not met its burden of proof of demonstrating an absence of risk of non-compliance such that the continuation of the stay is warranted.

ii. Risk of non-recovery

109. After due consideration of the arguments presented by the Applicant, and the counter-arguments presented by the Respondent on Annulment, in their respective two rounds of submissions, the *ad hoc* Committee is not persuaded that the asserted difficulty or impossibility for Venezuela to recover any amounts eventually paid out to the Award creditor if the Award is annulled is a circumstance requiring the continuation of the stay.

110. It is true, as argued by the Applicant, that *ad hoc* committees under the ICSID Convention have held that a significant factor in favor of maintaining the stay of enforcement is the difficulty for the respondent State to recover the amount paid under the award if it is later annulled. In support of this, the Applicant cites the decisions of the *ad hoc* committees of *CMS v. Argentina, Enron v. Argentina* and *El Paso v. Argentina*.[115]

111. The Applicant also argues that there is a possibility that a third party to this case might seize any amount paid under the Award, thus making it impossible for Venezuela to recover such amount if the Award is annulled.[116]

112. In conducting the assessment the risk of non-recovery by the Applicant, some *ad hoc* committees have considered the profile of the claimant in order to evaluate such risk. For example, the *ad hoc* committee in *Patrick Mitchell v. Democratic Republic of Congo* signaled that since the claimant was a natural person, whose assets and activities were difficult to localize, the circumstances posed difficulties for recoupment.[117]

113. In the instant case, it has been demonstrated in the record that OI is a large international company with the considerable solvency and liquidity of the corporate group of which it is a member.[118] The argument that the Respondent on Annulment may cease being a member of such group has not been evidenced, but is only speculative. There is nothing in the record that suggests to this *ad hoc* Committee that the Respondent on Annulment would refuse reimbursement of any payment in the event the Award is annulled, nor is there persuasive evidence that a third party's possible attachment of its assets may affect the company to such extent as to impede payment to Venezuela if the *ad hoc* Committee were to annul the Award.

[115] See ¶ 29 of this Decision.
[116] See ¶ 30 of this Decision.
[117] *Patrick Mitchell v. Democratic Republic of Congo*, Decision on Stay, ¶ 24.
[118] See Respondent on Annulment's Observations, ¶ 103, referring to "Form 10-K Owens Illinois, Inc. Annual Report," United States Securities and Exchange Commission, 10 February 2015.

114. Again, the *ad hoc* Committee does not find convincing evidence of actual circumstances related to the issue of non-recovery that, in itself, requires a continuation of the stay of enforcement.

iii. Whether the Application for Annulment is well founded or dilatory

115. Regarding the issue of whether the Application for Annulment is well founded or dilatory, the *ad hoc* Committee agrees with the statements made by other annulment committees that the merits of an annulment application are not relevant for purposes of the decision on whether or not to grant the stay, or the continuation of the stay. An appropriate inquiry is, however, whether the application is manifestly dilatory.[119] Likewise, the mere fact that the application is not dilatory is not sufficient to grant the extension of the stay.[120]

116. Having reviewed the Application for Annulment by Venezuela, the *ad hoc* Committee does not find that the arguments or allegations of the Applicant in support its Application for Annulment could be considered manifestly unfounded or merely efforts to delay the enforcement of the Award. However, this finding does not dictate that the stay automatically should be maintained. This is so for at least two reasons. First, this *ad hoc* Committee agrees with the Applicant that at this stage of the annulment proceedings it is not for the *ad hoc* Committee to decide on whether the Application for Annulment is well founded or not, apart from its screening for manifest abusiveness. Second, a serious good faith application is the least that can be expected from an applicant, and nothing in the ICSID Convention expresses, or allows an understanding, that compliance with or fulfillment of that minimum duty requires the extension of the stay.

iv. Irreparable harm

117. The Respondent on Annulment maintains that the Applicant has failed to prove that terminating the provisional stay would cause it irreparable prejudice or "catastrophic consequences."

118. The Applicant's main argument is that, if the stay is terminated, then Venezuela will need to divert a significant amount of its public funds for payment of the Award. If so, those public funds, so much needed in Venezuela for essential services, such as health, education and public security, would not be available, and therefore, such public services will not be adequately supported, affecting the needs of the population.[121] The *ad hoc* Committee notes that should the Award be confirmed, payment of the Award amount, whether voluntary or as a result of its enforcement, would in any case come from public funds.

119. While that much is obvious, the Applicant also has not established in the evidence that the termination of the stay would necessarily result in the deductions from the specific

[119] *Elsamex v. Honduras*, Decision on Stay, ¶¶ 96, 97.
[120] *SGS v. Paraguay*, Decision on Stay, ¶ 94.
[121] Applicant's Reply, ¶ 89.

budgetary items involving the "people's needs" that the Applicant cites as the basis for its claimed irreparable harm, as opposed to deductions, if any, from other budgetary items.[122]

120. This *ad hoc* Committee agrees with the Respondent on Annulment's reasoning that the Applicant's argument, given is breadth and systemic implications, is unconvincing. "If the Applicant were right in this proposition, Article 52(5) of the ICSID Convention and Arbitration Rule 54 (1) would be dead letter provisions. That would contravene the public international law principle of *effete [sic] utile (ut res magis valeat quam pereat),* also called the principle of effectiveness."[123]

121. Furthermore, the *ad hoc* Committee has taken note of evidence in the record, as highlighted by the Respondent on Annulment, of the Applicant's stated intention to pay compensation, and the Applicant's having offered in July 2011 a payment of USD 100 million.[124] Furthermore, the Applicant does not appear to contest the Respondent on Annulment's position that for several years since October 2010 the plants in question have generated substantial revenues.[125] These elements of the record further militate against the Applicant's contention that the lifting of the stay will result in irreparable harm.

122. In the absence of any special circumstances duly evidenced in the record of the proceeding, this *ad hoc* Committee is not persuaded that the Applicant's argument of irreparable prejudice in the event of termination of the stay constitutes adequate circumstances under ICSID Convention Article 52(5). Furthermore, the *ad hoc* Committee concurs with the Respondent on Annulment that the Applicant did not provide evidence of irreparable harm, even less, of catastrophic consequences.

v. Prejudice if the stay of enforcement of the Award continues pending a decision on the annulment

123. The Applicant argues that the maintenance of the stay would not cause any actual, certain or real damage to the Respondent on Annulment, since the time elapsed between the rendering of the Award and the actual payment of any awarded amount –if the Award is not annulled– would be covered by interest due to OI in accordance with the Award. In support of this argument, the Applicant cites the decisions by the *ad hoc* committees in *Víctor Pey Casado v. Chile* and in *Azurix v. Argentina*.[126]

124. This *ad hoc* Committee is persuaded by the argument made by the Respondent on Annulment, both in its Observations and the Rejoinder, that delay in the payment of the

[122] Cf. ¶ 67 of this Decision.
[123] Respondent on Annulment's Rejoinder, ¶ 50.
[124] Respondent on Annulment's Observations, ¶ 111, citing *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25, Respondent's Counter-Memorial, 29 March 2013, paras 14, 89 and 283 (Exhibit OI-42); and Second Witness Statement of Mr Enrique Machaen, 1 July 2013, Summary of Meeting held on 11 July 2011 (Exhibit OI-36).
[125] Respondent on Annulment's Observations, ¶ 109.
[126] See ¶ 37 of this Decision.

Award amounts, covered by interest, does not constitute the only potential prejudice in the event the provisional stay is maintained:

> [I]nternational tribunals have issued numerous awards in recent years that have ordered the Applicant to pay (often vast) sums of compensation to claimants for its multiple violations of international law. Several of those awards are currently the subject of enforcement proceedings. Further, the Applicant is the State with the largest number of ICSID arbitrations pending against it –some or all of which may create yet further award debts and further enforcement claims on the Applicant's domestic and foreign asset holdings. In this context, maintaining the Provisional Stay would force the Respondent on Annulment backwards in a long queue of creditors… Thus, every day of delay that the Committee sanctions by way of a continuation of the Provisional Stay directly reduces the likelihood of the Respondent on Annulment being able to enforce the Award…[127]

125. The Applicant's argument based on the payment of interest does not address, in the view of this *ad hoc* Committee, the fact that there is a growing list of cases where the Applicant has been ordered to pay significant sums of compensation.[128] This growing list of cases appears to be undisputed by the Applicant, putting the Respondent on Annulment in a long line of creditors undertaking efforts to collect award amounts against the Applicant.

126. The *ad hoc* Committee notes that also in this case, as in all other alleged circumstances previously examined, the Applicant has been unable to convincingly show that circumstances exist which, according to Article 52(2) of the Convention, require a continuation of the provisional stay of enforcement of the Award.

127. The *ad hoc* Committee's analysis may therefore end here with the decision that the provisional stay is to be lifted given the absence of circumstances requiring its continuation. As stated in paragraph 19 of this Decision, the Applicant asserted that: (i) there is no risk of non-compliance by Venezuela of the Award in the event it is not annulled, and, in addition, such failure to honor the Award should not be presumed; (ii) there is a risk that Venezuela will not be able to duly recover its funds if the stay is terminated; (iii) the Application for Annulment is not dilatory; (iv) terminating the stay of enforcement of the Award would cause significant and irreparable damage to Venezuela; and (v) OI would not be prejudiced if the stay of enforcement of the Award continues pending a decision on the annulment. As regards each of these contentions, the *ad hoc* Committee expressed, one by one, why it was not convinced that there are circumstances that merit, under ICSID Convention Article 52(5), the continuation of the stay of enforcement of the Award.

128. Taking into account that the Applicant has not discharged its burden of proving that there is any circumstance that requires the continuation of the provisional stay, this *ad*

[127] Respondent on Annulment's Rejoinder, ¶ 118 (b).
[128] See Section II.C.(i) of the Respondent on Annulment's Observations, and Section III.A.(ii) of the Respondent on Annulment's Rejoinder.

hoc Committee is convinced that it must terminate such provisional stay, and so it decides.

vi. Continuation of the stay conditioned on the posting of a security

129. Due to the decision this *ad hoc* Committee is taking in the present case, there is no need to consider the Respondent on Annulment's request to condition the continuation of the stay on the posting of a security.

IV. DECISION

130. Based on the above considerations, the *ad hoc* Committee:

1. Rejects the request from the Bolivarian Republic of Venezuela to continue the stay of enforcement of the Award rendered on March 10, 2015, in ICSID Case No. ARB/11/25, *OI European Group, B.V. v. Bolivarian Republic of Venezuela*.

2. Declares that the provisional stay is terminated, and therefore, orders the lifting of such provisional stay effective as of the date hereof.

3. Reserves its decision on costs arising out of the Request for a subsequent stage of the proceedings.

[signed]
_____
Dr. Álvaro Castellanos
President of the *ad hoc* Committee
Date: April 4, 2016

[signed]
_____
Dr. Piero Bernardini
Member of the *ad hoc* Committee
Date: April 4, 2016

[signed]
_____
Mr. David Pawlak
Member of the *ad hoc* Committee
Date: April 4, 2016