

INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES

IN THE PROCEEDINGS BETWEEN

ABACLAT AND OTHERS

(CLAIMANTS)

AND

THE ARGENTINE REPUBLIC

(RESPONDENT)

ICSID Case No. ARB/07/5

**CONSENT AWARD
UNDER ICSID ARBITRATION RULE 43(2)**

ARBITRAL TRIBUNAL

Professor Pierre Tercier, President
Professor Albert Jan van den Berg, Arbitrator
Dr. Santiago Torres Bernárdez, Arbitrator

Secretary of the Tribunal:
Mr. Gonzalo Flores

Date of dispatch to the Parties: December 29, 2016

Representing Abaclat and others

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and

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THE TRIBUNAL

Composed as above,

After deliberation

In accordance with Rule 43(2) of the ICSID Arbitration Rules

Makes the following CONSENT AWARD:

I. PROCEDURAL HISTORY

- a. On 14 September 2006, Claimants filed their Request for Arbitration, accompanied by Annexes A through E.
- b. On 7 February 2007, the Secretary-General of ICSID registered the Request for Arbitration pursuant to Article 36(3) of the ICSID Convention.
- c. On 6 February 2008, the Secretary-General of ICSID informed the Claimants and the Argentine Republic (the “Parties”), as well as the arbitrators, that the Tribunal was deemed to be constituted by (i) Professor Albert Jan van den Berg, a national of The Netherlands, (appointed by Claimants), (ii) Professor Georges Abi-Saab, an Egyptian national, (appointed by Respondent) and (iii) Dr. Robert Briner, a Swiss national, (appointed by ICSID pursuant to Article 38 of the ICSID Convention). Further, the Tribunal was informed that Mr. Gonzalo Flores, Senior Counsel at ICSID, would serve as the Secretary to the Tribunal.
- d. On 10 April 2008, the First Session was held at the seat of ICSID in Washington, D.C. at which a procedural calendar for the further conduct of the proceedings was established. During the First Session it was agreed that the arbitration would be bifurcated in a jurisdictional and merits phase.
- e. On 8 August 2008, the Argentine Republic filed its First Memorial on Jurisdiction and Admissibility, accompanied by exhibits and expert reports.
- f. On 7 November 2008, Claimants filed their Counter-Memorial on Jurisdiction, accompanied by substitute versions of Annexes A through E, K and L; exhibits; witness statements and expert reports.

- g. On 12 December 2008, the Tribunal issued Procedural Order No. 1 ruling on the Parties' production for document requests.
- h. On 22 December 2008, the Parties exchanged documents in accordance with Annex A of the Tribunal's Procedural Order No. 1.
- i. On 9 February 2009, the Argentine Republic completed its document production as ordered in Procedural Order No. 1.
- j. On 23 February 2009, the Argentine Republic filed its Reply Memorial on Jurisdiction and Admissibility, accompanied by exhibits, witness statements and expert reports.
- k. On 6 May 2009, Claimants filed their Rejoinder Memorial on Jurisdiction, accompanied by exhibits, witness statements and expert reports.
- l. On 27 July 2009, Dr. Robert Briner resigned as President of the Tribunal due to health reasons. On 2 September 2009, Professor Pierre Tercier, a Swiss national, was appointed, by agreement of the Parties, as the new President of the Tribunal.
- m. On 14 October 2009, a joint telephone conference between the Tribunal (with Professor Pierre Tercier as the new President of the Tribunal), the Secretary and the Parties, was held.
- n. On 22 March 2010, the Tribunal held a pre-hearing joint telephone conference together with the Parties and ICSID, concerning the organization of an agenda for the Hearing on Jurisdiction scheduled on 7-13 April 2010.
- o. From 7 April 2010 to 13 April 2010, the Hearing on Jurisdiction took place at the seat of ICSID in Washington D.C. After hearing the Opening Statements of Counsel to both Parties, the Parties proceeded with the examination of the following Parties' witnesses and experts: Professor Richard A. Nagareda, Professor Avv. Antonio Briguglio, Subinspector Lucio Pereyra, Mr. Héctor Jorge Petersen, Mr. Massimo Cerniglia, Mr. Mario Franco, Mr. Brent C. Kaczmarek, Professor W. Michael Reisman, Mr. Stefano De Grandi, Mr. Joaquín A. Cottani, Professor

Christoph Schreuer, Professor Nicola Picardi, Mr. Héctor A. Mairal and Professor Dr. Rudolf Dolzer. The last two days were dedicated to the Parties' Closing Statements.

- p. On 20 May 2010, the Tribunal issued its Procedural Order No. 7, in which it ruled on the admissibility of new documents not yet in the record and which both Parties wished to submit in order to use them in their upcoming Post-Hearing Briefs.
- q. On 22, 23 and 25 June 2010, the Parties submitted their Post-Hearing Briefs, together with their responses to the Tribunal's nine questions raised in its letter of 20 May 2010.
- r. On 4 August 2010, the Parties filed their Statements of Cost.
- s. On 4 August 2011, the Tribunal issued its Decision on Jurisdiction and Admissibility signed by the President of the Tribunal, Professor Pierre Tercier, and arbitrator Professor Albert Jan van den Berg, affirming that Claimants' claims were within the jurisdiction of the Tribunal and admissible. Accordingly, Claimants' claims proceeded to the merits phase.
- t. On 28 October 2011, Arbitrator Georges Abi-Saab filed a dissenting opinion. On 1 November 2011, arbitrator Georges Abi-Saab tendered his resignation as a member of the Tribunal.
- u. On 29 December 2011, the Argentine Republic appointed Dr. Santiago Torres Bernárdez, a national of the Kingdom of Spain, as a member of the Tribunal to replace Professor Georges Abi-Saab. On 19 January 2012, the proceeding resumed following Dr. Torres Bernárdez' acceptance of his appointment.
- v. On 1 October 2012, Claimants filed their Memorial on Phase 2, accompanied by exhibits, witness statements and expert reports, as well as the Claimants' Database, which was available online, and Claimants' Annexes A, B, C, D, E, K, and L.

- w. On 26 December 2012, the Argentine Republic filed its Counter-Memorial, accompanied by exhibits, witness statements and expert reports.
- x. On 8 February 2013, the Tribunal issued Procedural Order No. 17 confirming, among other things, the appointment of the independent expert Dr. Norbert Wühler and the engagement of his team. The Arbitral Tribunal also confirmed the general scope of the Expert's Mission as described in Procedural Order No. 15, subject to conditions set forth in Procedural Order No. 17.
- y. Following the Parties' submissions and comments on Dr. Norbert Wühler's mandate and on the Draft Verification Report dated 31 May 2013, Dr. Norbert Wühler submitted the Final Verification Report on 31 August 2013.
- z. On 19 November 2013, Claimants filed their Reply Memorial on Phase 2, accompanied by exhibits, witness statements and expert reports, along with the Claimants' Database and updated versions of Claimants' Annexes A, B, C, D, E, K, and L.
- aa. On 31 March 2014, the Argentine Republic filed its Rejoinder Memorial, accompanied by exhibits, witness statements and expert reports.
- bb. On 3 June 2014, the President of the Tribunal held a pre-hearing joint telephone conference together with the Parties and ICSID concerning the organization of and agenda for the Hearing on Phase 2 scheduled on 16-24 June 2014.
- cc. From 16 June 2014 to 24 June 2014, the Hearing on Phase 2 took place at the seat of ICSID in Washington D.C. After hearing the Opening Statements of Counsel for both Parties, the Parties proceeded with the examination of the following witnesses and experts: Professor Nouriel Roubini, Ms. Noemi C. La Greca, Mr. Federico Molina, Dr. Joaquín Cottani, Dr. Pablo Guidotti, Professor Sebastián Edwards, Mr. Daniel Marx, Dr. Alberto Bianchi, Mr. Ismael Mata, Mr. Steven Kanner, Mr. Brent Kaczmarek, Messrs. Saul Keifman and Lucio Simpson, Professor Barry

Eichengreen, and the Tribunal-appointed independent expert, Dr. Norbert Wühler. The Hearing on the Merits concluded with the Parties' Closing Statements on 24 June 2014.

- dd. On 7 July 2014, Claimants submitted an updated list of Claimants and prayer for relief pursuant to the Tribunal's letter of 28 June 2014.
- ee. On 11 August 2014, Claimants filed a revised list of verified Claimants.
- ff. On 29 September 2014, the Parties filed their respective Post-Hearing Briefs on Phase 2.
- gg. On 29 October 2014, the Parties filed their respective Reply Post-Hearing Briefs on Phase 2.
- hh. On 12 November 2014, the Parties filed their respective submissions on costs.
- ii. By respective letters of 26 August 2016 and 22 September 2016, Claimants and the Argentine Republic informed the Tribunal that they have settled their dispute and that they would request the discontinuance of the proceeding.
- jj. On 7 October 2016, the Parties jointly submitted a request that the Tribunal formally terminate the arbitration proceeding and enter the agreed upon Consent Award into the record. The Parties' communication, submitted in English and Spanish, enclosed as Annex A, a draft text of the Consent Award in English and Spanish, with attachments.

II. SETTLEMENT

- kk. On 31 January 2016, Task Force Argentina ("TFA") on behalf of the Claimants, and the Argentine Republic entered into an Agreement in Principle with the mutual intention of reaching a settlement to resolve their dispute and end the proceedings before the Tribunal.
- ll. On 21 March 2016, the Parties requested in a joint letter that the Tribunal suspend the proceedings in light of the Agreement in Principle with the

mutual intention of reaching a settlement to resolve their dispute and end the proceedings.

- mm. On 21 April 2016, TFA on behalf of the Claimants and the Argentine Republic entered into a Settlement Agreement (the “Settlement Agreement”).
- nn. On 7 October 2016, a duly executed copy of the Settlement Agreement was provided to the Secretary-General of ICSID and the Tribunal.
- oo. Pursuant to the Settlement Agreement, on 7 October 2016, the Parties requested in a joint letter that the Tribunal, in accordance with ICSID Arbitration Rule 43(2), record the Settlement Agreement in the form of an Award, which will result in the formal termination of the ICSID proceedings.
- pp. In such joint letter the Parties acknowledged that both the Settlement Agreement and the Consent Award and their terms and provisions are made and agreed without any admission by the Parties of ICSID jurisdiction and international liability and it is not, and shall not, be represented and/or construed by the Parties as an admission of international liability or wrongdoing on the part of either Party.
- qq. The Settlement Agreement has been fulfilled. The Claimants have received payment in accordance with the Agreement and the Parties dispute has been resolved completely.
- rr. In light of the above, in accordance with ICSID Arbitration Rule 43(2) and as requested by the Parties, the Tribunal records the Settlement Agreement in the form of an Award.

III. AWARD

- ss. On 15 December 2016, the Tribunal unanimously decides, in accordance with Rule 43 of the ICSID Arbitration Rules, that the Settlement Agreement signed by TFA on behalf of the Claimants and the Argentine Republic, attached as Appendix A, be recorded verbatim as an enforceable Award on the agreed terms.

tt. The Parties will bear equally all the arbitration costs incurred after the “Closing Date” as defined in the Settlement Agreement. Each Party will bear any of its own costs and legal fees incurred after the Closing Date.

[Signed]

Prof. Albert Jan van den Berg
Arbitrator
Date: December 21, 2016

[Signed]

Dr. Santiago Torres Bernárdez
Arbitrator
Date: December 15, 2016

[Signed]

Prof. Pierre Tercier
President
Date: December 22, 2016

This Consent Award has been rendered unanimously, subject to Dr. Santiago Torres Bernardez' Declaration, which is attached hereto.