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Before the:  
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT  
DISPUTES  
(ADDITIONAL FACILITY)

VANNESSA VENTURES, LTD.  
(Claimant)

v.

BOLIVARIAN REPUBLIC OF VENEZUELA

(ICSID Case No. ARB/(AF)/04/6)

May 7-11, 2007

Arbitration Suite of IDRC  
70, Fleet Street  
London, United Kingdom

Monday, 16th April 2007  
DAY 1

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2

List of Participants  
Tribunal

3 V. V. Veeder, President of the Tribunal  
Charles N. Brower, Arbitrator  
4 Jan Paulsson, Arbitrator  
5 ICSID Secretariat  
6 Claudia Frutos-Peterson, Secretary of the Tribunal  
7 On behalf of the Claimant  
8 John Laskin, Torys LLP, Toronto  
John Terry, Torys LLP, Toronto  
9 Julie Maclean, Torys LLP, Toronto  
Ruth Anne Flear, Torys LLP, Toronto  
10 Also on behalf of the Claimant  
11 Christopher Greenwood, Essex Chambers, London  
12 Claimant's Representatives  
13 Marianna Almeida, Vanessa Ventures Ltd.  
John Morgan, Vanessa Ventures Ltd.  
14 Ross Melrose, Vanessa Ventures Ltd.  
15 On behalf of the Respondent  
16 Gustavo Álvarez, Asesor adjunto al Despacho de la  
Procuradora General de la República  
17 Tulio Cusman, Asesor externo de la Procuraduría General de  
la República  
18 Ronald Goodman, Winston & Strawn, Washington D.C.  
Paolo Di Rosa, Arnold & Porter, Washington D.C.  
19 Gaela Gehring Flores, Arnold & Porter, Washington D.C.  
Dmitri Evseev, Winston & Strawn, Washington D.C.  
20 Cristina Sorgi, Winston & Strawn, Washington D.C.  
Bonard Molina-García, Winston & Strawn, Washington D.C.  
21 Kelby Ballera, Winston & Strawn, Washington D.C.  
Margarita Sánchez, Winston & Strawn, Washington D.C.  
22 Court Reporter - Emma White, Boscon Reporting Services Ltd.  
23  
24  
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1

1 Monday, 7th May 2007 08:02:13  
2 (10.00 am) 10:00:40  
3 PRESIDENT VEEDER: Good morning, ladies 10:02:53  
4 and gentlemen. We will start the first day of 10:02:53  
5 this hearing in London. We need to go through 10:02:55  
6 the introductions first. On my left, as you 10:03:03  
7 will recognize, is my co-Arbitrator, Charles 10:03:07

8 Brower. On my right is my co-Arbitrator, Jan 10:03:10  
9 Paulsson. To my extreme left is the Secretary 10:03:14  
10 of the Tribunal, Claudia Frutos-Peterson, and 10:03:17  
11 we would just like to go around the room first 10:03:20  
12 taking the Claimants and then the Respondents, 10:03:23  
13 identifying the persons present here today. 10:03:25  
14 MR. LASKIN: John Laskin, counsel. 10:03:32  
15 MR. TERRY: John Terry, counsel. 10:03:34  
16 MS. MACLEAN: Julie MacLean, counsel. 10:03:35  
17 MS. ALMEIDA: Marianna Almeida, counsel, 10:03:40  
18 in-house. 10:03:42  
19 MS. FLEAR: Ruth Anne Flear, Secretary to 10:03:44  
20 John Terry. 10:03:47  
21 MR. MORGAN: John Morgan. I am with 10:03:48  
22 Vanessa Ventures. 10:03:50  
23 MR. MELROSE: Ross Melrose. I am with 10:03:51  
24 Explorium Enterprises. Coral Holdings. 10:03:53  
25 Explorium Enterprises. 10:04:03

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1 PRESIDENT VEEDER: Thank you very much. 10:04:05  
2 You are here at the request of the Claimants. 10:04:06  
3 Let's turn to the Respondent. 10:04:14  
4 MR. GOODMAN: Good morning. My name is 10:04:19  
5 Ron Goodman, here for the Respondent. We will 10:04:21  
6 just go around the room, I think. 10:04:27  
7 MR. DI ROSA: My name is Paulo Di Rosa. 10:04:29  
8 MS. GEHRING FLORES: Good morning. Gaela 10:04:33  
9 Gehring Flores for Respondent. 10:04:33  
10 MR. EVSEEV: Dmitri Evseev, also for 10:04:38  
11 Respondent. 10:04:41

12 6th May 2007 - Vanessa - Day 1.txt 10:04:54  
MR. ALVAREZ: Gustavo Alvarez.  
13 MR. CUSMAN: Tulio Cusman. 10:04:54  
14 PRESIDENT VEEDER: Thank you very much. 10:05:02  
15 We now need to deal with certain 10:05:06  
16 procedural matters in accordance with the 10:05:08  
17 agenda that was sent to the parties on the 4th 10:05:10  
18 of May. The first of those procedural matters 10:05:12  
19 is an application which was made by the 10:05:15  
20 Respondent by the letter dated 3rd May, 2007 10:05:20  
21 from Winston & Strawn, to which the Claimant 10:05:23  
22 responded by letter of the 4th of May, 2007 10:05:27  
23 from their legal representatives. 10:05:34  
24 As recorded in the letter of the 3rd of 10:05:38  
25 May, 2007 from Winston & Strawn, this is an 10:05:40

3

1 application for the withdrawal of Professor 10:05:46  
2 Greenwood from these proceedings. 10:05:51  
3 We understand this is still a live 10:05:55  
4 application in the light of the response of the 10:05:58  
5 4th of May from the Claimant's legal 10:06:01  
6 representatives, and unless there are other 10:06:04  
7 matters which need to be addressed before we 10:06:07  
8 look at that application, we propose to start 10:06:11  
9 with that. 10:06:13  
10 Is that agreeable to the Claimant? 10:06:16  
11 MR. TERRY: Mr. President, just one point. 10:06:18  
12 You asked whether it was still a live matter. 10:06:20  
13 Mr. Goodman and I haven't spoken about this 10:06:22  
14 since we had the exchange of correspondence. 10:06:25  
15 It appeared in his letter that he believed that 10:06:27  
16 there had been a sudden and recent appointment 10:06:34

17 of Mr. Greenwood. We, of course, explain in 10:06:36  
18 our letter the history behind our retainer of 10:06:39  
19 Mr. Greenwood. I don't know whether this 10:06:43  
20 changes Venezuela's view, because the letter, 10:06:44  
21 with respect, it wasn't completely clear to us, 10:06:48  
22 it seemed to be a combination of this, as 10:06:50  
23 Mr. Goodman called it, "sudden appointment", 10:06:52  
24 and the issues of the disclosures from The 10:06:54  
25 Panel that raised their concerns, so we are not 10:06:57

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1 sure whether there is still an issue. 10:07:01  
2 I certainly haven't heard anything further from 10:07:03  
3 my friend. 10:07:05  
4 PRESIDENT VEEDER: Perhaps you can help 10:07:05  
5 us, because we noticed the date in your letter 10:07:06  
6 of the 4th of May, that Professor Greenwood was 10:07:08  
7 instructed in the, "Fall", of 2006. Could you 10:07:12  
8 be more precise as to what that date suggests? 10:07:16  
9 MR. TERRY: In the fall of 2006, we had 10:07:20  
10 received in late August or early September the 10:07:23  
11 Memorial on Jurisdiction from Venezuela. That 10:07:28  
12 Memorial included in it the expert report of 10:07:32  
13 Yves Fortier. You will remember that we sent 10:07:36  
14 a letter to the Tribunal taking the position 10:07:39  
15 that in our view the matters dealt with in the 10:07:44  
16 Fortier report were more a matter of argument 10:07:48  
17 than expert evidence. Consistent with that, we 10:07:51  
18 retained Mr. Greenwood at the time being, in 10:07:54  
19 our view, as someone with expertise in public 10:07:58  
20 international law and treaty interpretation to 10:08:01

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21 assist us in making the argument on the first 10:08:02  
22 jurisdictional point raised by Venezuela. That 10:08:05  
23 is the history behind the retainer at that 10:08:11  
24 point in time. 10:08:13  
25 We were asked by ICSID to provide a list 10:08:17

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1 of the parties that were -- or the counsel and 10:08:20  
2 others who were attending for April 23rd. We 10:08:22  
3 did so. At that point on April 23rd the -- or 10:08:25  
4 shortly thereafter, and I forget the exact date 10:08:30  
5 on which ICSID would have transmitted the list 10:08:33  
6 to the Respondents, but they received the list, 10:08:36  
7 and then, of course, on April 27th followed 10:08:39  
8 with the disclosures from yourself, 10:08:42  
9 Mr. President, and Mr. Brower. 10:08:45

10 PRESIDENT VEEDER: Let's turn the floor to 10:08:49  
11 the Respondent. Is this a live application? 10:08:50

12 MR. GOODMAN: The application remains as 10:08:58  
13 written. The timing of it, of the retention, 10:09:02  
14 is, of course, interesting, the timing of when 10:09:09  
15 we found out about it was the -- was, I think, 10:09:13  
16 at the point that we were making. I should say 10:09:18  
17 that upon receipt of the letter of 4th May from 10:09:23  
18 my friend, the thing that also -- and also 10:09:32  
19 coming from the explanation we have just heard, 10:09:39  
20 it is also not clear at this point, given that 10:09:43  
21 he has tied it to the witness statement of 10:09:47  
22 Mr. Fortier and the exchange that was had with 10:09:51  
23 the Tribunal at that time -- I should say that 10:09:57  
24 the letters that were written to the Tribunal 10:10:01  
25 at that time. 10:10:04



3 6th May 2007 - Vanessa - Day 1.txt expert report of Mr. Macrea put forward. 10:11:42  
4 Mr. Greenwood -- I can assure my friend is 10:11:45  
5 here solely in the role as counsel. The reason 10:11:47  
6 he's not in the room right now, sitting in the 10:11:49  
7 counsel's chair, is we thought it was 10:11:52  
8 appropriate, given the nature of this issue, 10:11:53  
9 that he sit outside until this matter could be 10:11:55  
10 determined. 10:11:57  
11 PRESIDENT VEEDER: Well, the factual 10:12:00  
12 situation has been clarified. It is the 10:12:01  
13 position of the Claimant to have Professor 10:12:04  
14 Greenwood here as one of its legal 10:12:06  
15 representatives, and we understand, also, that, 10:12:09  
16 as such, he will be addressing the Tribunal by 10:12:13  
17 way of oral submissions to the Tribunal today. 10:12:16  
18 Is that right? 10:12:19  
19 MR. TERRY: He will not -- our plan is, as 10:12:20  
20 we noted in the correspondence -- to do an 10:12:26  
21 opening today, which is not going to be more 10:12:28  
22 than about an hour to an hour-and-a-half. 10:12:30  
23 Mr. Greenwood, our plan would be to address the 10:12:33  
24 Tribunal later on in our argument solely on the 10:12:38  
25 matter of issue, solely in the role of counsel, 10:12:40

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1 making a presentation as counsel, arguing as 10:12:43  
2 counsel. 10:12:46  
3 PRESIDENT VEEDER: As we also understand, 10:12:46  
4 this is a live application and it would now 10:12:47  
5 seem appropriate to hand the floor back to the 10:12:50  
6 Respondent to pursue the application as they 10:12:51  
7 wish, in the light of the letter of the 4th of 10:12:55



8 May, 2007 from the Respondents' legal 10:12:57  
9 representatives and the clarification that we 10:13:00  
10 have just heard this morning. So, the 10:13:02  
11 Respondent has the floor. 10:13:04  
12 MR. GOODMAN: We accept the explanation of 10:13:07  
13 Mr. Greenwood being presented as counsel and 10:13:09  
14 not as expert, and we trust the Tribunal, of 10:13:12  
15 course, takes note of that. As for further 10:13:20  
16 exposition, I think the exposition is as set 10:13:23  
17 forth in the letter and we will leave it at 10:13:25  
18 that for your decision. Thank you. 10:13:27  
19 PRESIDENT VEEDER: You have a right of 10:13:33  
20 response. 10:13:34  
21 MR. TERRY: I take it, then, that we still 10:13:38  
22 do have a live issue despite the explanation. 10:13:40  
23 The only other points I would add, simply 10:13:43  
24 because Mr. Greenwood provided us with this 10:13:45  
25 information and the Panel members will be aware 10:13:48

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1 of this as well, he explained in two of the 10:13:50  
2 arbitrations, I believe one involved 10:13:52  
3 Azerbaijan, one involves Uzbekistan, both of 10:13:55  
4 those, I understand, are at a very early stage. 10:13:58  
5 In one case there has been the procedural 10:14:01  
6 hearing only. In the other, I understand there 10:14:04  
7 hasn't yet been the procedural hearing, so that 10:14:07  
8 is additional information that Mr. Greenwood 10:14:09  
9 wanted us to pass on. 10:14:12  
10 Of course, as we set out in the letter, we 10:14:30  
11 set out our views that in our view the 10:14:34

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12 co-Arbitrator role is not one that, we believe, 10:14:37  
13 certainly from an objective perspective, would 10:14:40  
14 reasonably lead to a problem with impartiality. 10:14:44  
15 Unless you have any questions on our 10:14:49  
16 submissions we have set out our submissions and 10:14:51  
17 our view on this issue. 10:14:56  
18 PRESIDENT VEEDER: Thank you very much. 10:14:57  
19 We have a certain number of questions, and the 10:14:58  
20 first is; as you see, the Respondent is 10:15:00  
21 invoking the IBA, "Guidelines on Conflict of 10:15:03  
22 Interest in International Arbitration", 10:15:07  
23 a private document, albeit published by the 10:15:09  
24 IBA. If we look at General Standard 7, which 10:15:12  
25 is at page 15 of the little booklet, it seeks 10:15:18

10

1 to impose a duty on parties to inform an 10:15:25  
2 Arbitrator, the Arbitral Tribunal, the other 10:15:29  
3 parties in the arbitration institution or other 10:15:33  
4 appointing authority if any, about any direct 10:15:35  
5 or indirect relationship between it -- I leave 10:15:39  
6 out certain words -- and the Arbitrator. 10:15:44  
7 Now, as we understand what you have said 10:15:49  
8 this morning, confirming what was said in the 10:15:51  
9 letter of the 4th of May, Professor Greenwood 10:15:54  
10 was instructed by the Claimant at some stage 10:15:56  
11 after the Memorial on Jurisdiction from the 10:16:00  
12 Respondent, which was the 28th of August, 2006. 10:16:03  
13 MR. TERRY: Yes. 10:16:12  
14 PRESIDENT VEEDER: And before the 10:16:12  
15 preparation of the Counter-Memorial of the 10:16:14  
16 Claimant that was submitted on the 15th of 10:16:17

17 December, 2006? 10:16:19  
18 MR. TERRY: Yes. 10:16:21  
19 PRESIDENT VEEDER: At the time when he was 10:16:22  
20 instructed, was any thought given to notifying 10:16:24  
21 the Tribunal, or the other party, of Professor 10:16:28  
22 Greenwood's direct or indirect relationships 10:16:31  
23 between members of the Tribunal? 10:16:35  
24 MR. TERRY: It wasn't viewed -- we were 10:16:40  
25 aware, I can say, because it is clear, we were 10:16:42

11

1 aware that Mr. Greenwood was a member of the 10:16:45  
2 same chambers, Essex Chambers, as yourself, 10:16:47  
3 Mr. President. We discussed the matter with 10:16:51  
4 Mr. Greenwood, just to assess whether that 10:16:55  
5 would give rise to any conflict. We were 10:16:58  
6 certainly aware in Canada of the existence of 10:17:03  
7 the relationship between barristers within 10:17:09  
8 chambers as it is traditionally understood in 10:17:11  
9 England, and ourselves and Mr. Greenwood were 10:17:14  
10 not concerned by that relationship, and didn't 10:17:19  
11 view that as a relationship which would give 10:17:22  
12 rise to a conflict of interest. 10:17:24  
13 So, there was no -- at that point there 10:17:27  
14 was no consideration given to the necessity of 10:17:29  
15 informing the Tribunal that Mr. Greenwood may 10:17:35  
16 play a role as counsel in this proceeding. 10:17:40  
17 If I could just take a moment to look 10:17:58  
18 through the rest of Section 7? 10:18:00  
19 Mr. President, as I say, we were not 10:19:26  
20 focusing on the provisions of the IBA conflict 10:19:28

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21 of interest rules, but if we look at the rules, 10:19:31  
22 the explanation to General Standard 7, on the 10:19:35  
23 next page, page 16: 10:19:40  
24 "In addition, any party or potential party 10:19:45  
25 to an arbitration is, at the outset, required 10:19:48

12

1 to make a reasonable effort to ascertain or 10:19:51  
2 disclose publicly available information 10:19:54  
3 applying the general standard which might 10:19:56  
4 affect the Arbitrator's impartiality and 10:19:57  
5 independence". 10:20:00

6 Although we weren't looking specifically 10:20:01  
7 at that standard, we were reflecting upon the 10:20:02  
8 same set of issues, and our view then and our 10:20:05  
9 view now would be that we would fall within 10:20:10  
10 those provisions, that it wouldn't be the kind 10:20:14  
11 of relationship that would give rise to -- as 10:20:19  
12 it says here, would affect the Arbitrator's 10:20:21  
13 impartiality and independence, and we remain of 10:20:25  
14 that view. The fact that there is a chambers 10:20:27  
15 relationship, as we have expressed in our 10:20:31  
16 letter, and as the IBA guidelines discuss in 10:20:33  
17 detail, that that relationship is not one that 10:20:36  
18 should give rise to an issue of impartiality 10:20:39  
19 and independence. 10:20:42

20 PRESIDENT VEEDER: Thank you. Another 10:20:44  
21 question, and, again, since we are trespassing 10:20:46  
22 potentially on issues of privilege we don't 10:20:49  
23 require an answer, at least not for the time 10:20:53  
24 being, but would we be wrong in assuming that 10:20:54  
25 Professor Greenwood played a part in the 10:20:58

1 drafting of the Claimant's Counter-Memorial of 10:21:00  
2 the 15th of December, 2006, and in the 10:21:04  
3 Rejoinder Memorial of the 16th of April, 2007? 10:21:08  
4 MR. TERRY: He certainly reviewed a draft 10:21:15  
5 of each. 10:21:18  
6 PRESIDENT VEEDER: Thank you. 10:21:21  
7 ARBITRATOR PAULSSON: Reviewed and 10:21:27  
8 contributed to, I suppose? 10:21:28  
9 MR. TERRY: I think it would be fair to 10:21:30  
10 say upon review he had comments. 10:21:31  
11 PRESIDENT VEEDER: Do you have anything 10:21:54  
12 more you wish to add to your response? 10:21:55  
13 MR. TERRY: No thank you, Mr. President. 10:22:01  
14 PRESIDENT VEEDER: The respondent has 10:22:05  
15 a right of reply. 10:22:06  
16 MR. GOODMAN: A short reply. 10:22:13  
17 Now, we are troubled by just the piling on 10:22:14  
18 in the few days prior to the hearing of various 10:22:23  
19 things of this sort. I suppose we will be 10:22:25  
20 getting to Canada's attempted intervention as 10:22:28  
21 well, but this is, again, something that is 10:22:31  
22 being -- when there has been plenty of time to 10:22:40  
23 clear these issues, to have them necessarily 10:22:43  
24 come up in the last few days prior to the 10:22:48  
25 hearing is, itself, troubling for Venezuela. 10:22:50

1 I think I will leave it there. 10:23:01  
2 PRESIDENT VEEDER: The Tribunal would like 10:23:08

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3 to pause here and just consult privately. So, 10:23:09  
4 we will take a break of ten minutes. 10:23:12  
5 (10.23 am) 10:23:15  
6 OFF THE RECORD 10:23:17  
7 (10.36 am) 10:36:18  
8 PRESIDENT VEEDER: Let's resume. 10:36:28  
9 I make this as a personal statement and 10:36:34  
10 not as a decision of the Tribunal. Personally, 10:36:35  
11 I am greatly troubled by the circumstances in 10:36:39  
12 which Professor Greenwood was instructed as 10:36:41  
13 counsel by the Claimant last autumn, and that 10:36:44  
14 this development was not disclosed to the 10:36:47  
15 Tribunal, ICSID or the Respondent until 10:36:49  
16 recently. 10:36:53  
17 I do not consider that I can continue in 10:36:54  
18 this arbitration as Chairman of this Tribunal 10:36:56  
19 unless both parties expressly consent to my 10:37:01  
20 doing so now, and Professor Greenwood withdraws 10:37:03  
21 from this case with immediate effect. 10:37:07  
22 That is my statement. We are going to 10:37:11  
23 break again and then return to hear further 10:37:13  
24 submissions or comments from the parties. 10:37:16  
25 (10.37 am) 10:37:19

15

1 OFF THE RECORD 10:37:21  
2 (11.29) 10:54:54  
3 MR. TERRY: Mr. President, first of all, 11:29:19  
4 we regret that you, Mr. President, were put 11:29:20  
5 into an awkward position by the circumstances 11:29:26  
6 of the retainer of Mr. Greenwood, and we also 11:29:28  
7 convey Mr. Greenwood's regret in that respect. 11:29:34

8 We are willing to have Mr. Greenwood withdraw 11:29:38  
9 as counsel, and I should just turn it over to 11:29:42  
10 my friend Mr. Goodman to provide his views. 11:29:48  
11 PRESIDENT VEEDER: Thank you. 11:29:53  
12 Mr. Goodman? 11:29:54  
13 MR. GOODMAN: Mr. President, Venezuela 11:29:58  
14 does consider this whole issue a very serious 11:30:05  
15 one, which of course is why we raised it, and 11:30:10  
16 we are under instructions that, while we 11:30:17  
17 appreciate the obvious honesty and integrity 11:30:21  
18 that led you to offer to make the statement 11:30:27  
19 that you made, we are not in a position to 11:30:35  
20 consent to the your remaining as Chairman, and 11:30:42  
21 it is our feeling that these kinds of 11:30:55  
22 situations are unfortunate, and we believe that 11:31:00  
23 Arbitrators, when faced with this kind of 11:31:05  
24 situation, should, indeed, take the actions 11:31:08  
25 that you suggest, and I think that is our 11:31:14

16

1 statement at this point. Thank you. 11:31:19  
2 PRESIDENT VEEDER: Thank you for both your 11:31:29  
3 statements. The Tribunal would like to reflect 11:31:31  
4 upon what has been said. We will have another 11:31:34  
5 break now and resume shortly. 11:31:37  
6 (11.31 am) 11:31:39  
7 OFF THE RECORD 11:31:42  
8 (11.46 am) 11:46:04  
9 PRESIDENT VEEDER: Let's resume. This is 11:46:17  
10 a personal statement and not a decision of the 11:46:18  
11 Tribunal. 11:46:25

12 I thank the parties for their exchanges. 11:46:29  
13 Having carefully considered those exchanges, 11:46:32  
14 I cannot, in these circumstances, continue as 11:46:33  
15 President of this Tribunal, and accordingly 11:46:38  
16 I shall forthwith submit my resignation as 11:46:41  
17 a member of this Tribunal in accordance with 11:46:45  
18 Article 14, subparagraph (3) of the arbitration 11:46:48  
19 additional facility rules. 11:46:52  
20 There is another statement to follow from 11:46:56  
21 my co-Arbitrator, Mr. Paulsson. 11:46:57  
22 ARBITRATOR PAULSSON: Thank you very much. 11:47:00  
23 This is also a personal statement. In 11:47:00  
24 light of the decision made by the Chairman, 11:47:04  
25 I wish to request both parties to release me 11:47:09

17

1 from my mandate as Arbitrator for reasons 11:47:12  
2 I will now explain. The reason for asking the 11:47:14  
3 parties' permission, if you continue reading 11:47:18  
4 Article 14.3, you will see that Arbitrators 11:47:21  
5 named by one party, if they resign, are subject 11:47:26  
6 to the consideration of the remaining 11:47:33  
7 Arbitrators when they resign. Under the 11:47:35  
8 circumstances, we no longer have two other 11:47:38  
9 Arbitrators to consider my resignation, and 11:47:41  
10 that is the reason I wish the parties to 11:47:43  
11 consent to the release from my mandate. 11:47:46  
12 The parties should recall that when I was 11:47:51  
13 appointed I wrote a statement calling your 11:47:54  
14 attention to the fact that my law firm, which 11:47:58  
15 is quite a sizeable one, has historically had 11:48:01  
16 a number of dealings with the Venezuela 11:48:05



17 government on the side of government entities 11:48:07  
18 and against it, and that given a sizeable law 11:48:09  
19 firm and a sizeable nation, it was likely that 11:48:14  
20 those types of situations might continue to 11:48:18  
21 occur. 11:48:20  
22 No-one had an objection to that at the 11:48:21  
23 time, and as I am sitting here today, I am 11:48:23  
24 still not ill at ease with my functioning as 11:48:27  
25 Arbitrator in this case, and would not 11:48:31

18

1 resign -- would not propose my resignation if 11:48:34  
2 it weren't for the fact that I now know that 11:48:37  
3 these proceedings will be disrupted in any 11:48:39  
4 event in order to have a new Chairman 11:48:42  
5 appointed. Under those circumstances, I am 11:48:44  
6 telling you that if I had to consider my 11:48:46  
7 position from when I was first appointed as of 11:48:48  
8 today, I would decline to serve, because, in 11:48:52  
9 the intervening time, there have been a number 11:48:56  
10 of political initiatives in Venezuela which are 11:49:00  
11 a matter of public record, which we can read 11:49:03  
12 about in the newspapers, which create 11:49:05  
13 circumstances where there is more likelihood to 11:49:07  
14 be international litigation, and I am just very 11:49:10  
15 concerned about that, that that may be such 11:49:13  
16 that one day, even though I am not in an 11:49:16  
17 uncomfortable position now, I might find myself 11:49:19  
18 in that position, and I don't think that is in 11:49:22  
19 the interests of any party. 11:49:24  
20 Taking, for these purposes, that the 11:49:28

21 Claimant's case is a valid case, take that 11:49:30  
22 proposal, there would be possibly 11:49:32  
23 disappointment under those circumstances on the 11:49:36  
24 Venezuelan side. On the side of the claimant, 11:49:39  
25 I don't understand why a claimant would want to 11:49:42

19

1 have a successful outcome of the arbitration 11:49:44  
2 which is then under a cloud. 11:49:46

3 So, those are my reasons, and I emphasize 11:49:49  
4 that I make this request understanding that 11:49:54  
5 this case is going to be disrupted in any 11:49:57  
6 event, and I think it is prudential in the 11:49:59  
7 interests of everyone if I were to be replaced. 11:50:05

8 Thank you. 11:50:08

9 PRESIDENT VEEDER: What I suggest now is 11:50:10  
10 that we again suspend this hearing. It will 11:50:11  
11 perhaps not resume formally today, but it may 11:50:16  
12 be useful, whether formally or informally, for 11:50:19  
13 the parties to confer as to how they see these 11:50:23  
14 proceedings continuing, and whether anything 11:50:27  
15 can be salvaged from what was planned to take 11:50:31  
16 place this week. I shall not be involved, and 11:50:33  
17 my formal involvement will now cease as I speak 11:50:36  
18 now, but let's break, and with one or more 11:50:41  
19 Arbitrators it may be helpful to examine what 11:50:45  
20 can be done. 11:50:48

21 Mr. Goodman, you had something to say? 11:50:50

22 MR. GOODMAN: Just that we thank the 11:50:54  
23 Arbitrators for being ready to do this case, 11:50:59  
24 and again, to honour the President for his 11:51:05  
25 statesmanlike position on this. 11:51:11

1 I did have a question with regard to 11:51:16  
2 Mr. Paulsson's comment with respect to the need 11:51:19  
3 for a kind of joint release. I didn't 11:51:24  
4 necessarily find that in the rules. It does 11:51:30  
5 happen that Tribunals sometimes resign, whether 11:51:35  
6 one, two, or sometimes three of them, and they 11:51:40  
7 are not constrained by the fact that there is 11:51:44  
8 then no -- I am not sure, maybe we need 11:51:47  
9 guidance from ICSID -- but there was at least 11:51:52  
10 in one of the rules now, I don't know if it is 11:51:59  
11 in the Additional Facility rules, where, if 11:52:01  
12 there are not sufficient other members to grant 11:52:05  
13 the consent, if that was the issue, that that 11:52:07  
14 issue was decided by ICSID itself, but I am 11:52:10  
15 not -- you may be right. I just thought that 11:52:12  
16 there was no constraint necessarily, but you 11:52:17  
17 may be talking about something other than 11:52:19  
18 a rules-based issue. 11:52:22  
19 ARBITRATOR PAULSSON: Thank you for the 11:52:24  
20 question, Mr. Goodman. I am trying to fill 11:52:25  
21 what I perceive to be a gap in Article 14.3. 11:52:28  
22 Given the position taken by the Chairman, I am 11:52:33  
23 in the second sentence now, I am an Arbitrator 11:52:35  
24 appointed by one of the parties. My 11:52:37  
25 resignation is subject to consideration by the 11:52:40

1 Tribunal. 11:52:42  
2 There is a problem in working out that 11:52:44

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3 rule. I think that would be resolved if both 11:52:46  
4 parties, in a phrase which I have invented for 11:52:50  
5 the circumstances, if both parties would, 11:52:53  
6 "release me from my mandate". I think that 11:52:55  
7 would resolve any problem in this regard. 11:52:58

8 MR. GOODMAN: I think from our side, the 11:53:42  
9 issue is not the release which I am instructed 11:53:45  
10 to grant, if that is what the right word is, 11:53:54  
11 but just that this does not prejudice 11:53:59  
12 Venezuela's right to appoint a new Arbitrator, 11:54:03  
13 because the issue of consent or not is at the 11:54:08  
14 basis of the ability for a party to appoint an 11:54:13  
15 Arbitrator once an Arbitrator resigns, and 11:54:20  
16 I think -- I do think you are right. I think 11:54:23  
17 there is a gap here which is not in the regular 11:54:25  
18 ICSID rules which does take care of that issue, 11:54:31  
19 so we are happy -- not happy -- but we will 11:54:36  
20 grant the release without, however, prejudice 11:54:43  
21 to our ability to appoint an Arbitrator to 11:54:47  
22 replace you. 11:54:51

23 ARBITRATOR PAULSSON: I should not be 11:54:54  
24 musing on these things on the hoof, as it were, 11:54:55  
25 but I believe that you are correct, that the 11:54:58

22

1 problem that you have just addressed is one 11:55:02  
2 that arises under arbitrations under the ICSID 11:55:03  
3 Convention, and the matter you have just raised 11:55:08  
4 about the way in which I will be replaced does 11:55:11  
5 not fall subject to that rule under the 11:55:15  
6 Additional Facility rules. 11:55:18  
7 I had made my statement and explained my 11:55:20

8 position on the hypothesis that it was in the 11:55:22  
9 interests of both parties that a reconstituted 11:55:26  
10 Tribunal has -- is one with respect to which 11:55:31  
11 there are no concerns at all, and it is in that 11:55:34  
12 spirit that I think it is prudential for me to 11:55:37  
13 withdraw. 11:55:40

14 MR. TERRY: Mr. Paulsson and Tribunal 11:55:44  
15 members and former members, we are just going 11:55:47  
16 to take a moment with our client. 11:55:52

17 PRESIDENT VEEDER: Please do. 11:55:55  
18 (11.56 am) 11:55:58

19 OFF THE RECORD 11:56:03

20 (12.06 pm) 11:56:03

21 ARBITRATOR PAULSSON: Let me start off by 12:06:18  
22 saying that I should have listened to myself 12:06:19  
23 and not invented things on the hoof, because 12:06:21  
24 Article 17, filling vacancies under the 12:06:23  
25 Additional Facility rules does deal with the 12:06:26

23

1 situation of a resignation without the consent 12:06:28  
2 of the Tribunal, and I am, of course, in a bit 12:06:31  
3 of a difficulty in obtaining the consent of the 12:06:33  
4 Tribunal under present circumstances. That 12:06:36  
5 being said -- 12:06:39

6 MR. TERRY: We have conferred with our 12:06:43  
7 clients, Mr. Paulsson, and we grant the release 12:06:45  
8 you request. 12:06:48

9 ARBITRATOR PAULSSON: Right. Thank you 12:06:50  
10 very much. For the record, may I take it then, 12:06:51  
11 on both sides, that your consent to releasing 12:06:54

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 12 me from my mandate should be deemed as an 12:06:56  
 13 agreement by the parties that they consider 12:07:00  
 14 this a resignation to which consent should be 12:07:07  
 15 given? There is nobody else to give it. 12:07:10  
 16 MR. GOODMAN: We would understand that 12:07:22  
 17 according to the rules, according, specifically 12:07:30  
 18 to the rules, that you are resigning pursuant 12:07:35  
 19 to 14.3 of the rules? 12:07:37  
 20 ARBITRATOR PAULSSON: Correct. 12:07:39  
 21 MR. GOODMAN: And the parties consent 12:07:47  
 22 thereto. This is what I have understood. 12:07:49  
 23 MR. TERRY: Yes. 12:07:52  
 24 ARBITRATOR PAULSSON: Thank you. 12:07:54  
 25 MS. FRUTOS-PETERSON: Just for the record, 12:09:34

24

1 the secretary wants to say that on behalf of 12:09:35  
 2 the Secretary General in accordance with 12:09:38  
 3 Article 16 now, the proceeding has suspended 12:09:39  
 4 and there are two vacancies in the Tribunal 12:09:43  
 5 that they will have to be replaced, and it is 12:09:45  
 6 only by then that the proceeding will be 12:09:49  
 7 resumed. 12:09:52  
 8 ARBITRATOR PAULSSON: May I express my 12:09:57  
 9 admiration for the written work that has taken 12:09:59  
 10 place in this Tribunal? I was honoured to 12:10:02  
 11 serve on the Tribunal. I was very impressed by 12:10:04  
 12 the work that was done. I regret for the 12:10:06  
 13 parties that this disruption has occurred, and 12:10:08  
 14 for myself, that I will not be in a position to 12:10:10  
 15 see how the case developed, so I wish you God 12:10:12  
 16 speed, both sides. 12:10:15

17	(12.10 pm)	12:10:18
18	(Hearing suspended)	12:10:21
19	-----oo00oo-----	12:10:25
20		
21		
22		
23		
24		
25		

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