



JUAN C. BASOMBRIO
(714) 800-1405
FAX (714) 800-1499
basombrio.juan@dorsey.com

20 May 2020

By Email

Sarah Z. Vasani
Partner
Addleshaw Goddard
60 Chiswell Street
London EC1Y 4AG, England

*Re: Republic of Mozambique; Mozambique Ministry of Transport and
Communications v. Patel Engineering Ltd.
Arbitration Rules of the International Chamber of Commerce*

*Patel Engineering Ltd. v. Republic of Mozambique
UNCITRAL Arbitration Rules (1976)*

Dear Ms. Vasani:

On or about 6 May 2011, the Mozambique Ministry of Transport and Communications (“MTC”) and Patel Engineering Ltd. (“PEL”) purported to execute a document, entitled “Memorandum of Interest Between Ministry of Transport and Communications and Patel Engineering Ltd.” (“MOI”).

ICC ARBITRATION:

Clause 10 of the MOI contains the following Arbitration Agreement:

“The present document constitutes a memorandum of interest between the parties. Any dispute arising out of this memorandum between the parties shall be referred to arbitration. The arbitration will be governed by Mozambique law and the rules of the International Chamber of Commerce shall be followed. Each party will appoint one arbitrator and both of these appointed arbitrators will in turn appoint the presiding arbitrator. The venue of the arbitration shall be at the Republic of Mozambique.”

Sarah Z. Vasani
Partner
Addleshaw Goddard
London, England
20 May 2020
Page 2

Pursuant to Clause 10 of the MOI, enclosed please find the Request for Arbitration of the Republic of Mozambique (“Mozambique”) and the MTC against PEL, pursuant to the Arbitration Rules of the International Chamber of Commerce, which we filed today, 20 May 2020, with the International Chamber of Commerce. My colleague Lindsey Schmidt will be forwarding the exhibits separately to you.

In the MOI, the parties agreed that the ICC Arbitration will be conducted under the Arbitration Rules of the International Chamber of Commerce: “the rules of the International Chamber of Commerce shall be followed.” *See* MOI at Clause 10. The parties agreed that the ICC “arbitration will be governed by Mozambique law” *Id.* Further, the parties agreed that the place of the ICC Arbitration shall be in Mozambique: “The venue of the arbitration shall be at the Republic of Mozambique.” *Id.* Mozambique and the MTC propose that the arbitration be conducted in the City of Maputo, the capital of Mozambique.

In the MOI, the parties did not identify the language of the ICC Arbitration. Mozambique and the MTC propose that the language be both Portuguese and English, without the need for translations. However, the parties may provide translations and use interpreters at their choice.

Please take note that Mozambique and the MTC have nominated their arbitrator, for the ICC arbitration proceeding:

Maria Fernanda Rocha Lopes
FL&A Advogados
Rua Frente de Libertação de Moçambique (ex-R.Pereira do Lago), nº 224
Maputo, Moçambique
Telephone: (+258) 21 496974
Email: fernanda.lopes@fla.co.mz

See Request for Arbitration at ¶ 275.

Sarah Z. Vasani
Partner
Addleshaw Goddard
London, England
20 May 2020
Page 3

UNCITRAL ARBITRATION:

We acknowledge receipt of the Notice for Arbitration, dated 20 March 2020, pursuant to the Mozambique-India BIT and the UNCITRAL Arbitration Rules of 1976, that you forwarded on behalf of PEL against Mozambique.

In Footnote 111 of the Notice of Arbitration, PEL states: “For the avoidance of doubt, the Claimant does not agree to submit this present dispute under Article (9)(2) of the Treaty either: (a) to the judicial, arbitral or administrative bodies of Mozambique” However, it is the contention of Mozambique that PEL agreed to submit the present dispute to ICC Arbitration in Mozambique, under Clause 10 of the MOI. Clause 10 is broad enough to include any BIT claims. At a minimum, the ICC Arbitration must be concluded before the UNCITRAL Arbitration.

Mozambique and the MTC request that PEL dismiss the UNCITRAL Arbitration without prejudice or agree to suspend the UNCITRAL Arbitration until after conclusion of the ICC Arbitration, *supra*. Assuming that PEL is not agreeable, and without any waiver by or prejudice to Mozambique or the MTC, and solely in order not to default, Mozambique and the MTC respond to the proposals in Part V of the PEL Notice for Arbitration, as follows.

Pursuant to Article 9(c) of the Mozambique-India BIT, Mozambique agrees with PEL that the arbitration tribunal shall consist of three arbitrators, with each party appointing one arbitrator and the two party-appointed arbitrators appointing the president of the tribunal.

Pursuant to Article 9(3)(c)(ii), the parties “*shall appoint their respective arbitrators within two months*” of the Claimant’s reference to arbitration. Mozambique agrees with Patel that the deadline for each party to nominate their respective arbitrator is today, 20 May 2020.

Sarah Z. Vasani
Partner
Addleshaw Goddard
London, England
20 May 2020
Page 4

Mozambique and the MTC designate the following arbitrator for purposes of the UNCITRAL Arbitration:

Hugo Perezcano Díaz
180 Northfield Drive West, Unit 4
Waterloo ON N2L 0C7 Canada
Telephone: +1 (226) 355-9865
Email: hugo.perezcano@iiuris.com
Attached is a copy of Mr. Perezcano's CV.

Mozambique agrees that the UNCITRAL Arbitration shall be administered by the Permanent Court of Arbitration at The Hague, Netherlands ("PCA"). Counsel for both parties shall contact the PCA jointly to make the arrangements.

With respect to Article 16 of the UNCITRAL Rules, Mozambique proposes that the place of the UNCITRAL Arbitration (meaning, both the legal seat and physical location of hearings) be Maputo, Mozambique. Mozambique does not agree to London, England, because it would favor the offices of PEL's counsel, just as we assume PEL would not agree to Orange County, California, where my offices are located. As a compromise, however, Mozambique proposes that the place of the UNCITRAL Arbitration be The Hague, Netherlands, and that hearings be conducted at the arbitration facilities of the PCA.

With respect to Article 17 of the UNCITRAL Rules, we assume that Patel will not agree that the language be Portuguese. Thus, also as a compromise, Mozambique proposes that the language be both English and Portuguese. However, the parties may provide translations and use interpreters at their choice.

Finally, we received Patel's request for production of documents. The request is premature. Mozambique also will have document requests for Patel, in due course. The Tribunal will enter a procedural order setting forth a schedule for the proceedings, which will include dates for the *mutual* production of documents.

Sarah Z. Vasani
Partner
Addleshaw Goddard
London, England
20 May 2020
Page 5

I look forward you hearing from you on these various points.

On a personal note, I hope that you and your family are doing well in these challenging times.

With best regards,



Juan C. Basombrio
Dorsey & Whitney LLP
600 Anton Blvd., Suite 2000
Costa Mesa, California 92626
Tel. 1 (714) 800-1405
Email: basombrio.juan@dorsey.com

Lincoln Loehrke
Lindsey Schmidt
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
Tel. 1 (612) 340-2600
Email: loehrke.lincoln@dorsey.com
Email: schmidt.lindsey@dorsey.com

*Counsel for the
Republic of Mozambique*

Enclosures

CURRICULUM VITAE

HUGO PEREZCANO DÍAZ

+1 (226) 355-9865

hugo.perezcano@iiuris.com

ATTORNEY-AT-LAW**LANGUAGES**

Native-level English and Spanish; full professional proficiency in French.

PROFESSIONAL EXPERIENCEINDEPENDENT ARBITRATOR / INDEPENDENT CONSULTANCY /
PRIVATE LAW PRACTICE*At present*
*(11/2011 to 05/2017)**Arbitrator, attorney and international trade and investment
consultant**Main areas of expertise:*

- International Arbitration
- Economic Law, International Trade and Investment
- Public International Law
- Government Procurement
- Customs Law
- Technical Standards
- Intellectual Property (IP)
- Trade Remedies
- Corporate & Transactional Law

CENTRE FOR INTERNATIONAL GOVERNANCE INNOVATION

*05/2017 to 07/2019**Deputy Director, International Economic Law,
International Law Research Program*

SECRETARIAT OF THE ECONOMY (MEXICO)

*Head of Unit of International Trade Practices**01/2007 to 10/2011*

- ♦ Head of Mexico's Trade Remedy Authority, directing administrative investigations on trade remedies (antidumping, countervailing duties and safeguards), leading international negotiations and overseeing dispute settlement proceedings concerning trade remedies.

SECRETARIAT OF TRADE AND INDUSTRIAL PROMOTION (MEXICO)

*General Counsel – International Trade Negotiations**12/1994 to 12/2006*

- ♦ Led office in charge of providing legal advice to the Ministry on all international matters. Experience includes:
 - i. Mexico's main legal counsel on trade negotiations;
 - ii. Mexico's lead negotiator for dispute settlement and institutional matters of all its trade agreements;

- iii. lead counsel on investment matters, including the negotiation of bilateral investment treaties; and
- iv. oversaw legal aspects of the ongoing operation of free trade, investment and other international agreements entered into by Mexico.
- ◆ Principal legal counsel and Legal Representative for United Mexican States in international disputes arising under trade and investment agreements, including:
 - i. the Agreement establishing World Trade Organization,
 - ii. the North American Free Trade Agreement, and
 - iii. bilateral investment treaties entered into by Mexico.

Director of Legal Analysis***03/1993 to 12/1994***

- ◆ Lead counsel for Mexico in negotiation of free trade agreements with Latin American countries.
- ◆ Legal advisor for Mexico on government procurement, technical standards and labor matters.

Deputy Director of Legal Analysis – Office for Negotiations of the NAFTA***03/1992 to 03/1993***

- ◆ Legal advisor for Mexico on government procurement.

GRUPO IMPULSORA***Legal Counsel******09/1991 to 03/1992***

- ◆ Provided legal counsel focusing on corporate and transactional law.

SANTAMARINA Y STETA, S.C.***Legal Intern******10/1989 to 09/1991***

- ◆ Handled corporate matters, foreign investment, antidumping and countervailing duty matters

ARBITRATION RELATED EXPERIENCE

- ◆ Arbitrator (presiding arbitrator and co-arbitrator) in proceedings conducted under the WTO Agreement, NAFTA and international investment agreements, as well as in private commercial cases.
- ◆ Lead counsel for Mexico in 14 investor-State international dispute settlement cases conducted under the ICSID and UNCITRAL rules.
- ◆ Lead counsel for Mexico in 5 government-government dispute settlement cases conducted under the NAFTA and the WTO Agreement.
- ◆ Lead counsel for Mexico in 9 trade and investment cases where Mexico acted as an intervening party.
- ◆ Head of Mexico's team of lawyers in close to 30 WTO dispute settlement cases, with the overall responsibility to advise and oversee international litigation.
- ◆ Regular speaker at conferences on international arbitration.

EDUCATION

MEXICO'S AUTONOMOUS INSTITUTE OF TECHNOLOGY (INSTITUTO TECNOLÓGICO AUTÓNOMO DE MÉXICO) *Degree in Law 1992*

THE UNITED MEXICAN STATES *License to Practice Law 1992*

PROFESSORSHIPS AND RESEARCH

CENTRE FOR INTERNATIONAL GOVERNANCE INNOVATION
Senior Fellow, International Law Research Program. 02/2014 to 05/2017

INTERNATIONAL CHAMBER OF COMMERCE / ESCUELA LIBRE DE DERECHO
Professor – Dispute Settlement between States and between Investors and the State. 11/2000 to 2017

- ◆ Commercial Arbitration Diplomat Program

MONTERREY INSTITUTE OF TECHNOLOGY AND ADVANCED STUDIES (INSTITUTO TECNOLÓGICO Y DE ESTUDIOS SUPERIORES DE MONTERREY), Mexico City Campus
Professor – NAFTA and other Trade Agreements. Summer 2004

- ◆ Master of International Law (LLM) Program

UNIVERSIDAD IBEROAMERICANA
Professor – International Trade Law 2002

- ◆ International Business Master Program

MEMBERSHIPS

International Chamber of Commerce (2014-2017).

ICC Mexico: President of the Commission on Trade and Investment policy (2016 - 2017)

Mexican Arbitration Institute (2013 -)

Mexican Council of International Affairs (2012 - 2017)

PUBLICATIONS

PEREZCANO, HUGO *et al.* “Reforming the WTO AB: Short-term and Mid-term Options for DSU Reform, and Alternative Approaches in a Worst Case Scenario” Think-20 (T-20) Policy Briefs, Japan, 15 de March de 2015, 23 pp. <https://t20japan.org/policy-brief-reforming-the-wto-ab/>

PEREZCANO, HUGO. “Trade in North America: A Mexican Perspective on the Future of North America’s Economic Relationship” in *The Future of North America’s Economic Relationship. From NAFTA to the New Canada-United States-Mexico Agreement and Beyond*. Special Report, February 2019, Centre for International Governance Innovation

(CIGI), Waterloo, ON, 7 pp. <https://www.cigionline.org/publications/future-north-americas-economic-relationship-nafta-new-canada-united-states-mexico>.

PEREZCANO, HUGO. *Risks Of A Selective Approach To Investor-State Arbitration*. Investor –State Arbitration Series, Paper No. 3, April 2016. Centre for International Governance Innovation (CIGI), Waterloo, ON, 12 pp. <https://www.cigionline.org/publications/risks-of-selective-approach-investor-state-arbitration>.

PEREZCANO, HUGO. “Investment Opportunities in Latin America: A Mexican Perspective” in *The Arab World and Latin America: Economic and Political Relations in the Twenty-First Century*. Fehmy Saddy editor,(1st ed., I.B.Tauris, London/New York, 2016), chapter 7.

INSTITUTO MEXICANO DE ARBITRAJE, *Legislación mexicana de arbitraje comercial*. 1^a ed., Ed. Porrúa, México, D.F., 2015, 381 pp. (Contributor).

Perezcano, Hugo. *Peeling NAFTA Layers: Twenty Years After*. Centre for International Governance Innovation (CIGI), Waterloo, ON, 2015, 15 pp. <https://www.cigionline.org/publications/peeling-nafta-layers-twenty-years-after>.

PEREZCANO, Luis, Hugo Perezcano y Félix Cárdenas: *¿Cómo comprar una empresa exitosa? El search fund como modelo de emprendimiento*. (1st ed., RiskMathics Financial Innovation, México City, 2014) 266 pp.

Perezcano, Hugo “Enhancing the Dispute Settlement System or Much Ado about Nothing” in *Investment Treaty Arbitration and International Law*. ed pos Ian A. Laird et al., Juris, Huntington, N.Y., 2013, pp. 1-10.

Perezcano, Hugo “Transparency in International Dispute Settlement Proceedings on Trade and Investment” in *Appeals Mechanism in International Investment Disputes*. ed. Pos Karl P. Sauvant and Michael Chiswick-Patterson, Oxford University Press, New York, 2008, pp. 193-200.

Perezcano, Hugo “Los Tratados Internacionales en el Orden Jurídico Mexicano” in Bernado Sepúlveda, Juez de la Corte Internacional de Justicia. Gustavo Vega Cánovas, Coord.; El Colegio de México, Centro de Estudios Internacionales, Mexico City, 2007, pp. 125-189.

Perezcano, Hugo: “Los Tratados Internacionales en el Orden Jurídico Mexicano” in *Anuario Mexicano de Derecho Internacional*, Vol. VII, Instituto de Investigaciones Jurídicas, UNAM, Mexico City, 2007, pp. 249-279.

Perezcano, Hugo: “Damages in investor-state arbitration: applicable law and burden of proof” in *Evaluation of Damages in International Arbitration*. Ed. International Chamber of Commerce, ed. pos. Yves Derains y Richard Kreindler, Dossiers ICC Institute of World Business Law, Vol. IV, Paris, 2006, pp. 113-132.

Perezcano, Hugo “Transparency, Amicus Curiae Briefs and Third Party Rights”. Comments made at 10th Geneva Global Arbitration Forum, in *The Journal of World Investment and Trade*. Vol. 5, No. 2, Werner Publishing Company, Geneva, February 2004, pp. 347-348.

Perezcano, Hugo: “Is it Now Time for Multilateral Investment Agreement?” Comments made at 10th Geneva Global Arbitration Forum, in *The Journal of World Investment and Trade*. Vol. 5 No. 1, Werner Publishing Company, Geneva, February 2004, pp. 101-103.

Perezcano, Hugo: “Investment Protection Agreements: Should Multilateral Approach be Reconsidered?” in *The Journal of World Investment*. Vol. 4, No. 6, Werner Publishing Company, Geneva, December 2003, pp. 929-939.

Perezcano, Hugo: “Investor-State Arbitration. A New Dynamic, Not New Dimension” in *Newsletter of Committee D (Arbitration and ADR) of International Bar Association Section on Business Law*, Vol. 6, N° 1, June 2001, pp. 40-43.

Perezcano, Hugo: “El arbitraje nivel internacional y dentro del marco del TLC” en *El arbitraje en las relaciones de consumo. Procuraduría Federal del Consumidor (Los Libros del Consumidor)*, Mexico City, 1997, pp. 85-98.

Perezcano, Hugo: “Government Procurement” en *Mexican Law: A Treatise For Legal Practitioners and International Investors*. Vol. 1, chapter 15, West Group, St. Paul, Minn., 1998, pp. 543-548.

Perezcano, Hugo “¿Son los páneles establecidos conforme al Tratado de LibreComercio de América del Norte autorida despara los efectos del juicio de amparo?” en *Revista de Derecho Privado*. No. 27, McGraw Hill and Instituto de Investigaciones Jurídicas, UNAM, Mexico City 1998, pp. 211-232. Also in *Documentos de Trabajo*. No. 2, Secretaría de Comercio y Fomento Industrial, Mexico City, 1998).

Perezcano, Hugo “La solución de controversias en el marco del Tratado de LibreComercio de América del Norte” en *El futuro del libre comercio en el continente americano. Análisis y perspectiva*. UNAM, Mexico City, 1997, pp. 277-299.

January, 2020