

PCA CASE NO. 2009-23

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS, SIGNED ON 27 AUGUST 1993 (THE “TREATY”) AND THE UNCITRAL ARBITRATION RULES 1976 (THE “UNCITRAL ARBITRATION RULES”)

BETWEEN: -

1. CHEVRON CORPORATION (U.S.A.)
2. TEXACO PETROLEUM COMPANY (U.S.A.)

The Claimants

- and -

THE REPUBLIC OF ECUADOR

The Respondent

DECISION OF 6 NOVEMBER 2018 ON
THE RESPONDENT’S REQUEST FOR INTERPRETATION
UNDER ARTICLE 35 OF THE UNCITRAL ARBITRATION RULES

The Arbitration Tribunal:

Dr. Horacio A. Grigera Naón
Professor Vaughan Lowe, QC
V.V. Veeder (President)

Secretary to the Tribunal:
Martin Doe

A: Introduction

1. The Tribunal refers to (i) the Respondent's request by letter dated 28 September 2018 (the "Request") made under Article 35 of the UNCITRAL Arbitration Rules, (ii) the Tribunal's Procedural Order dated 29 September 2018; (iii) the Claimants' letter dated 13 October 2018 opposing the Request, (iv) the Tribunal's Procedural Order No 53 of 19 October 2018; and (v) the Respondent's letter dated 1 November 2018.
2. The Tribunal has considered the Parties' said submissions in full. The Tribunal does not think it necessary to summarise them here for the purpose of this Decision. For ease of reference, these submissions are annexed to and form part of this Decision.
3. By its Request, the Respondent seeks an "interpretation and clarification" of certain provisions in the Tribunal's Second Partial Award dated 30 August 2018 issued in Track II of these arbitration proceedings (being the second of three Tracks, with Track III still to be completed by the Parties and the Tribunal).
4. These provisions are contained in Paragraph 10.13 of the Operative Part X, Section of the Second Partial Award, "Orders as to the Merits", where the Respondent:

"... shall, to the satisfaction of the Tribunal and as unconditional obligations of result (save where otherwise indicated):

(i) take immediate steps, of its own choosing, to remove the status of enforceability from the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts);

(ii) take immediate steps, of its own choosing, to preclude any of the Lago Agrio Plaintiffs, any "trust" purporting to represent their interests (including the "Frente de Defensa La Amazonia"), any of the Lago Agrio Plaintiffs' representatives, and any non-party funder from enforcing any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts), directly or indirectly, whether by attachment, arrest, interim injunction, execution or howsoever otherwise;

(iii) on notice from the First or Second Claimants, advise promptly in writing any State (including its judicial branch), where the Lago Agrio Plaintiffs may be seeking directly or indirectly, now or in the future, the enforcement or recognition of any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) of this Tribunal's declarations and orders regarding the Respondent's internationally wrongful acts comprising a denial of justice resulting from the Lago Agrio Judgment (as thus decided); and, for this purpose (being required by legal duty or to pursue a legal right), any Party shall be entitled, notwithstanding Article 32(5) of the UNCITRAL Arbitration Rules, to disclose to the State's judicial branch (on whatever terms that its courts may order) a copy of this Award and its earlier awards, orders and decision;

(iv) abstain from collecting or receiving, directly or indirectly, any proceeds from the enforcement or recognition of any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) within or without Ecuador;

(v) return promptly to the First Claimant any such proceeds that (notwithstanding the foregoing) come into the Respondent's custody, possession or control;

(vi) take corrective measures, of its own choosing, to "wipe out all the consequences" of all the Respondent's internationally wrongful acts in regard to the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts), within the meaning of Article 31 of the International Law Commission's Articles on State Responsibility, excepting only reparation in the form of compensation (as to which, see Section E below);

(vii) comply with its obligations towards the First Claimant and the Second Claimant as "Releasees" under the 1995 Settlement Agreement, in accordance with Article II(3)(c) of the Treaty; and

(viii) subject to further order of this Tribunal in Track III, make full reparation in the form of compensation for any injuries caused to the First Claimant and the Second Claimant by the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate Court, Cassation and Constitutional Courts)."

5. It is appropriate to consider each of the material provisions in turn, as queried by the Respondent in its Request.
6. For such considerations, the Tribunal applies Article 35 of the UNCITRAL Arbitration Rules, forming part of the Parties' Arbitration Agreement. It provides as follows:

"(1) Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award.

(2) The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 32, paragraphs 2 to 7, shall apply."
7. The Request was made timeously by the Respondent within the 30-day time-limit imposed by Article 35(1) of the UNCITRAL Arbitration Rules. In the circumstances, the Tribunal considered it appropriate to grant the Claimants an opportunity to respond in writing to the Request and for the Respondent to be granted an opportunity to reply in writing to the Claimants' written response. This Decision is issued to the Parties within the 45-day time-limit imposed by Article 35(2) of the UNCITRAL Arbitration Rules.
8. The Respondent expressly disclaims any request for the Tribunal's "reconsideration of the decisions made in the arbitral award" (Respondent's letter dated 1 November 2018, p. 2). It is common ground between the Parties that such a request for reconsideration lies outside any relief afforded by Article 35 of the UNCITRAL Arbitration Rules.

B: The First Query

9. The first query is whether the order “to remove the status of enforceability from the Lago Agrio Judgment” in Paragraph 10.13(i), cited above, requires the Respondent to “nullify the Lago Agrio Judgment in its entirety under Ecuadorean law” or only to “prevent the enforcement of the Judgment, by whatever means” (Request, p. 4).
10. The Tribunal considers that the meaning of this order is clear, both from its wording and in the context of the Partial Award read as a whole, particularly Part IX on the Parties’ respective claims for relief.
11. Nevertheless, for the avoidance of any possible doubt, the Tribunal here confirms that the order in Paragraph 10.13(i) of the Second Partial Award to “take immediate steps, of its own choosing, to remove the status of enforceability from the Lago Agrio Judgment” does not necessarily require the nullification of the Lago Agrio Judgment. Pursuant to the Second Partial Award, the Respondent may take whatever steps, of its own choosing, that have the said effect of removing the status of enforceability from that Judgment.
12. Further, the Tribunal confirms that there is nothing in Paragraph 10.13(i) of the Second Partial Award that deprives the Respondent “of its legal right to challenge the award” under the *lex loci arbitri* (Request, p.4).

C: The Second Query

13. The second query concerns the introductory provision in Paragraph 10.13 of the Second Partial Award that the various steps set out in sub-paragraphs (i) to (viii) of Paragraph 10.13 be taken “to the satisfaction of the Tribunal” and that those steps are “unconditional obligations of result (save where otherwise indicated)”.
14. The Respondent expresses a concern that “the function and mechanisms of application of these standards for evaluating its compliance” with the orders in these sub-paragraphs are not clear (Request, p. 7).
15. The Tribunal considers that the meaning of this introductory provision and its sub-paragraphs is clear, both from the wording and in the context of the Partial Award read as a whole, particularly Part IX on the Parties’ respective claim for relief. Nevertheless, again for the avoidance of any possible doubt, the Tribunal here confirms that meaning.

16. The function of the introductory provision is to ensure that the orders in the following sub-paragraphs establish obligations on the Respondent to secure the specified results, and not merely for the Respondent to make its best efforts to secure those results.
17. As to the steps required in the sub-paragraphs, the Tribunal considers that the results to be achieved by such steps are sufficiently identified in those sub-paragraphs. The “function” and “mechanisms” for achieving those results comprise the steps to be taken by the Respondent, of its own choosing.
18. Nonetheless, if it were alleged in this arbitration that the Respondent was not complying with any part of Paragraph 10.13 of the Second Partial Award and that such non-compliance affected any further relief to be ordered by the Tribunal in this arbitration, the Tribunal would, on the application of any Party, decide on the matter as may be appropriate.

D: The Decision

19. The Tribunal formally does not accede to the Respondent’s requests for the interpretation of the Second Partial Award under Article 35 of the UNCITRAL Arbitration Rules, as advanced in the Respondent’s Request of 28 September 2018.
20. Nonetheless, for the avoidance of any possible doubts, the Tribunal confirms the meaning of Paragraph 10.13 of the Second Partial Award dated 30 August 2018 as expressly indicated above.
21. The Tribunal reserves to a later order or award all issues relating to any costs occasioned by the Respondent’s Request.
22. This Decision, although separately signed by the Tribunal’s members on three signing pages, constitutes a decision signed by the three arbitrators under Articles 32 and 35 of the UNCITRAL Arbitration Rules.

PLACE OF ARBITRATION: THE HAGUE, THE NETHERLANDS

DATE: 6 NOVEMBER 2018

Dr. Horacio A. Grigera Naón:

A handwritten signature in black ink, appearing to be 'H. Grigera Naón', written over a horizontal line.

Professor Vaughan Lowe QC:

V.V. Veeder (President):

PLACE OF ARBITRATION: THE HAGUE, THE NETHERLANDS

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Dr. Horacio A. Grigera Naón:

Professor Vaughan Lowe QC:

V.V. Veeder (President):

A handwritten signature in black ink, appearing to read "V.V. Veeder", with a horizontal line underneath it.

September 28, 2018

VIA E-MAIL

Mr. V.V. Veeder, QC
Essex Court Chambers
24 Lincoln's Inn Fields
London WC2A 3EG
United Kingdom

Mr. Martin Doe
Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

Prof. Vaughan Lowe, QC
Essex Court Chambers,
24 Lincoln's Inn Fields
London WC2A 3EG
United Kingdom

Ms. Jessica Wells
Essex Court Chambers
24 Lincoln's Inn Fields
London WC2A 3EG
United Kingdom

Dr. Horacio Grigera Naón
5224 Elliott Road
Bethesda, Maryland 20816
USA

WITH NOTICE TO:

Chevron Corporation and Texaco Petroleum Company

R. Doak Bishop
Wade M. Coriell
Edward G. Kehoe
David H. Weiss
Elizabeth Silbert
Isabel Fernández de la Cuesta
Sara McBrearty
Caline Mouawad

Re: PCA Case No. 2009-23; Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador

Dear Members of the Tribunal:

Pursuant to Article 35 of the UNCITRAL Arbitration Rules (1976) the Republic of Ecuador (the "Respondent" or "Ecuador") respectfully requests an interpretation and clarification of the Second Partial Award rendered on August 30th, 2018 (the "Award") in the UNCITRAL, PCA Case No. 2009-23, Chevron

Corporation and Texaco Petroleum Corporation v. The Republic of Ecuador (the “Request”).

The Republic of Ecuador seeks a *bona fide* interpretation of the Award in those instances where the meaning and scope of the Award are unclear or ambiguous. Interpretation is necessary when the language of the award is ambiguous¹ as well as when there are unclear commands in the operative part of the award.² Therefore, a request for interpretation seeks to remove an ambiguity in the text and it is not intended to reargue any aspect of the case³.

According to the UNCITRAL Arbitration Rules, there are no specific requirements for submitting a request for interpretation, other than giving notice to the other party and complying with time limits. The Republic of Ecuador is complying with the UNCITRAL Arbitration Rules in that respect.

Furthermore, although this arbitration is conducted under the UNCITRAL Rules, this request for interpretation also complies with the conditions for its admissibility as established by scholarly writings⁴ as well as decisions and awards of arbitral tribunals adjudicating under the ICSID Convention.⁵

First, an exchange of letters between Claimants and the Respondent over the meaning and scope of the ordered remedy in the Operative Part of the Award reflects the Parties’ differing interpretations, thus underscoring the need for clarification. The Republic has likewise identified other discreet, but potentially important, ambiguities. As a consequence, an authoritative interpretation from the Arbitral Tribunal is required.

¹ Iran-US CTR. *Pepsico, Inc. v. Slamic Republic of Iran*, Dec. No 18(260-18-1), (13 October 1986), 328-329.

² Iran-US CTR. *Paul Donin de Rosière vs. Islamic Republic of Iran*, Dec. No DEC57-498-10 (10 February 1987), 101-102.

³ Iran-US CTR. *Phibro Corporation v. Islamic Republic of Iran*, Dec. No DEC97-474-3 (17 May 1991), 254-55.

⁴ Christoph Schreuer, *The ICSID Convention: A Commentary* (Cambridge; New York: Cambridge University Press, 2009), 866.

⁵ On this point, see *Wena Hotels Ltd v Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Decision on the Application for Interpretation of the Award dated 8 December 2000 issued on 31 October 2005, § 76. Although the interpretation proceeding in the Wena case was conducted in accordance with Article 50 of the ICSID Convention, the same requirements are useful guidance for interpretation proceedings initiated pursuant to UNCITRAL Arbitration Rules, Art. 35.

Second, the Republic of Ecuador, by requesting this interpretation only seeks to get clarification on what the Tribunal intended in regard to the several issues identified below.

Third, the requested interpretation has important practical relevance to the Award's implementation, particularly in relation to the Tribunal's Orders as to the Merits (Part X, § D).

Based on the above, Ecuador asks the Arbitral Tribunal to issue an authoritative interpretation of the Award in respect of the following matters:

- I. The scope of the Tribunal's order directing Ecuador to "take immediate steps, of its own choosing, to remove the status of enforceability from the Lago Agrio Judgment"; and,
- II. The meaning of the Tribunal's order that Ecuador comply "to the satisfaction of the Tribunal and as unconditional obligations of result (save where otherwise indicated)".

I. THE SCOPE OF ECUADOR'S OBLIGATION OF TAKING IMMEDIATE STEPS TO REMOVE THE STATUS OF ENFORCEABILITY FROM LAGO AGRIO JUDGMENT

The Tribunal considered that the Claimants' case on "ghostwriting" satisfied the legal test for denial of justice under the Fair and Equitable Treatment standard in Article II(3)(a) of the Treaty since the Lago Agrio Judgment became enforceable on 01 March 2012 as result of the Appellate Court's judgment and order.⁶ Consequently, the Tribunal found that the judgment was left unremedied by Ecuador's judicial system (including the judgments of the Lago Agrio Appellate, Cassation and Constitutional Courts) and Ecuador's prosecutorial authorities. According to the Award, this conduct amounted to a

⁶ Second Partial Award on Track II ¶ 8.59

failure of Ecuador’s national system to “satisfy minimum standards required under international law”⁷.

Accordingly, the Tribunal ordered Ecuador to:

“(i) Take immediate steps, of its own choosing, to remove the status of enforceability from the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts);

(...)

(vi) take corrective measures, of its own choosing, to “wipe out all the consequences” of all the Respondent’s internationally wrongful acts in regard to the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts), within the meaning of Article 31 of the International Law Commission’s Articles on State Responsibility, excepting only reparation in the form of compensation (as to which, see Section E below);”⁸;

The Republic of Ecuador asks the Tribunal to clarify these two orders.⁹

By letter dated September 7, 2018, Claimants “demanded” the Respondent to “nullify the Lago Agrio Judgment in its entirety under Ecuadorian law.” Perhaps it is a matter of semantics, but the term “nullification” suggests a permanent cancellation of the Lago Agrio Judgment. This would of course deprive Ecuador of its legal right to challenge the partial award in an appropriate action in the Dutch courts. Ecuador instead understands the purpose of the Tribunal’s directive to prevent the enforcement of the judgment, by whatever means, but in a manner that would not deprive Ecuador of its legal right to challenge the award.¹⁰

Contrary to what Claimants request in their letter, the Republic of Ecuador believes that in order “to remove the status of enforceability from the Lago Agrio Judgment” and “wipe out all the consequences’ of all the Respondent’s

⁷ Second Partial Award on Track II ¶ 8.61

⁸ Second Partial Award on Track II ¶ 10.13(i), (vi).

⁹ The Republic of Ecuador takes no position in this Application regarding the scope of the Tribunal’s authority or powers to order any particular remedy. Ecuador reserves all its rights to challenge any part of the Award in the national courts of The Netherlands under applicable law. Nor should any statement herein be construed as an admission for purposes of any such set aside action. Again, the sole purpose of this Application is to secure clarity on certain issues.

¹⁰ If Ecuador successfully challenges the partial award, there would be no impediment to the Lago Agrio judgment regaining its status as an enforceable judgment.

internationally wrongful acts”, “nullification” of the Lago Agrio Judgment is both unnecessary and inappropriate for at least two following reasons:

- First, as the Tribunal correctly stated in the Award, the Lago Agrio Judgment exists as a concrete fact under Ecuadorian law and it has a legal effect and resulting consequences under international law.¹¹
- Second, the legal effect of the annulment of a judgment may be to deprive it of all force – make it disappear completely from the process -, in which case no jurisdictional body, including by way of a criminal action, will ever have the appropriate opportunity to address the allegations of procedural fraud, judicial misconduct and ghostwriting raised by the Claimants at the time, and order an adequate remediation.

To be clear, the Tribunal did not find any liability arising from: (i) the commencement of legal proceedings by the Lago Agrio Plaintiffs on 7 May 2003, and (ii) the Lago Agrio Complaint pleading individual claims for personal harm (not being diffuse claims)¹².

On 12 March 2015, the Tribunal specifically referred to the Lago Agrio Complaint, and issued its Decision on Track IB, where it decided, *inter alia*, by a majority:

“(1) The Lago Agrio Complaint of 7 May 2003, as an initial pleading, included individual claims resting upon individual rights under Ecuadorian law, not falling within the scope of the 1995 Settlement Agreement (as invoked by the Claimants);

(2) The Lago Agrio Complaint was not wholly barred at its inception by res judicata, under Ecuadorian law, by virtue of the 1995 Settlement Agreement (as invoked by the Claimants); and

(3) The Lago Agrio Complaint included individual claims materially similar, in substance, to the individual claims made by the Aguinda Plaintiffs in New York.”¹³

Referring to its previous Decision, in its Award:

“10.7 The Tribunal (by a majority) declares, confirming its Decision on Track IB, that the Lago Agrio Complaint of 7 May 1998, as an initial pleading, included individual claims (for personal harm) resting upon

¹¹ Second Partial Award on Track II ¶ 9.14

¹² Second Partial Award on Track II ¶ 9.5

¹³ Decision on Track IB Issues. 12 March 2015. Operative Part ¶ 186

individual rights under Ecuadorian law, not falling within the scope of the 1995 Settlement Agreement and that, therefore, the Lago Agrio Complaint was not wholly barred at its inception by res judicata under Ecuadorian law, by virtue of the 1995 Settlement Agreement;

10.8 The Tribunal declares that the said Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts) decided only diffuse claims as distinct from individual claims for personal harm by the Lago Agrio Plaintiffs, whereby the Respondent violated its obligations towards the First Claimant and the Second Claimant as “Releasees” under the 1995 Settlement Agreement;”¹⁴

Additionally, the Tribunal decided:

“For the avoidance of doubt, the Tribunal declares and confirms that neither this Award nor any of its earlier awards, orders and decision precludes a claim by any of the Lago Agrio Plaintiffs against the First or Second Claimants made for personal harm in respect of his or her individual rights, not being a diffuse claim within the meaning of the 1995 Settlement Agreement.”¹⁵

In sum, the partial award raises a variety of complex international and domestic law issues, and the Republic is currently exploring whether under Ecuadorian law the Lago Agrio Judgment could be deprived of its enforceability while protecting the human rights of the Lago Agrio Plaintiffs. The Republic of Ecuador therefore seeks a clarification on this particular issue.

II. THE TRIBUNAL’S ORDER TO COMPLY ITS ORDERS AS TO THE MERITS “TO THE SATISFACTION OF THE TRIBUNAL AND AS UNCONDITIONAL OBLIGATIONS OF RESULT (SAVE WHERE OTHERWISE INDICATED)”

Paragraph 10.13, “Section D: Orders as to the Merits” of the Award’s Operative Part states the following:

“10.13. The Respondent shall, to the satisfaction of the Tribunal and as unconditional obligation of result (save where otherwise indicated)”.

¹⁴ Second Partial Award on Track II ¶ 10.7, 10.8

¹⁵ Second Partial Award on Track II ¶ 10.12

In the above referenced paragraph, the Tribunal establishes two criteria of compliance with the Tribunal's orders as to the merits, which apparently govern the eight orders contained in the subheadings (i) through (viii) of paragraph 10.13. According to the Tribunal, Ecuador has to comply with the orders as to the merits: (A) *“to the satisfaction of the Tribunal”*, and (B) *“as unconditional obligations of result”*.

The function and mechanisms of application of these two standards for evaluating Respondent's compliance with the eight orders is not clear to Ecuador. Therefore, the Respondent respectfully requests clarification and the Tribunal's guidance on the following issues:

A. *“To the satisfaction of the Tribunal”*

The Tribunal's eight orders as to the merits are each of a different nature and impose on the Respondent distinct types of conduct, either to take action or to refrain from acting, (e.g. *generally, to take immediate steps to remove the status of enforceability from the Lago Agrio Judgment; advise promptly in writing to any State where the Lago Agrio Plaintiffs may be seeking enforcement or recognition of the Lago Agrio Judgment; abstain from collecting or receiving, directly or indirectly any proceeds from the enforcement of the Lago Agrio Judgment; take corrective measures to “wipe out all the consequences” of all the Respondent's internationally wrongful acts; comply with its obligations towards the First Claimant and the Second Claimant as “Releasees”).*

Per the Tribunal's orders as to the merits, Respondent would need to take a variety of fairly intricate steps both in and outside its national jurisdiction. However, under paragraph 10.13, the adequacy of these steps would be assessed exclusively on the basis of whether or not they were *“to the satisfaction of the Tribunal.”*

The current wording of the Award does not allow the Republic of Ecuador to objectively discern if its efforts pursuant to the Tribunal's orders are the kind of actions that the Tribunal have in mind, or if a different course of action is

required to satisfy the Tribunal. In this regard, Ecuador considers that the Tribunal is imposing an excessively subjective standard (that could potentially lead to determinations based on an excessive degree of discretion) and respectfully requests that the Tribunal: (a) clarifies which specific standard it intends to use to evaluate Ecuador's compliance with the orders as to the merits; (b) issues a clarification on how to best comply with the Tribunal's orders (particularly, orders (i), (ii), and (vi)); and (c) establishes a method/process to consult with the Tribunal beforehand as to the sufficiency of a particular measure adopted by the State to comply with an order [e.g. whether or not a particular communication, step, action, notification, etc. is enough to meet the continuing obligations imposed in the Award, for instance, with respect to notifications to other States].

The concept that the Republic of Ecuador must comply with the partial award to the "satisfaction" of the Tribunal presumes that the Tribunal will have continuing jurisdiction on the matter, even after a final award. That is contrary to the applicable Rules and practice. Ecuador instead submits that the Operative Part of the Award should be clear on its face so that there is no uncertainty in its meaning, either before or after issuance of a final award, so that the measure of the State's compliance is self-evident.

B. *"Unconditional obligations of result"*

Given the diverse range of actions that are covered by the Tribunal's eight orders as to the merits, Ecuador considers reasonable to request that the Tribunal confirms which of the eight orders do not impose obligations of result. In cases where the Tribunal is imposing unconditional obligations of result, as stated in subsection "C" below, Ecuador is requesting that the Tribunal provide certain guidelines or directions to fulfil these obligations.

- *Order (iii) – Paragraph 10.13.* Order as to the merits number (iii), imposes an obligation on Ecuador upon notification from the First or Second Claimant to *"advise promptly in writing any State (including its judicial branch), where the Lago Agrio Plaintiffs may be seeking directly or*

indirectly [...] the enforcement or recognition of the Lago Agrio Judgment [...]of this Tribunal’s declarations and orders regarding the Respondent’s internationally wrongful acts comprising a denial of justice resulting from the Lago Agrio Judgment [...]. Pursuant to this order, Ecuador’s only obligation would be to inform the other State, including its judicial branch, about the declarations and decisions that comprise the present arbitration proceeding, regardless of the eventual consideration of these materials by the other State or the final outcome of any such proceedings. Ecuador considers that order number (iii) imposes a clear obligation of means, not an unconditional obligation of result.

- *Order (vi) – Paragraph 10.13.* Pursuant to Order as to the merits (vi), Ecuador is bound to “take corrective measures, of its choosing to “wipe out all the consequences” of all the Respondent’s internationally wrongful acts in regard to the Lago Agrio Judgment...” The scope of this order is wide-ranging, but it is not followed by specifics about its implementation. The Tribunal is more than aware that practical difficulties may arise within the internal legal system under which Ecuador operates to comply with this order. In practice, Ecuador is in the precarious situation of being asked to implement measures that may not be supported by its municipal law/domestic legislation. In that respect, it may be obliged to achieve something that might not be achievable under its laws and competing international law obligations. In this context, Ecuador requests that the Tribunal provides clarification as to the implementation of an international law obligation “to wipe out all the consequences” of a State’s international wrongful act when such State’s legislation does not provide for additional judicial mechanisms to revert a final judgment.

C. Clarification on how to achieve the obligations of result ordered by the Tribunal

In general, where the nature of the Tribunal’s eight orders contained in paragraph 10.13 impose unconditional obligations of result, Ecuador considers reasonable that the Tribunal provides some clarification on how these

international law obligations are to be understood in the context of the State's municipal law, with fair and reasonable parameters and to the satisfaction of the Tribunal.

These clarifications could greatly facilitate the relationship among the Parties to this dispute and avoid additional and unnecessary disputes. This Tribunal has amassed vast knowledge of Ecuadorian law during this arbitration, which can be used for reference. But more than anything, this Tribunal's experience and knowledge of international law could be applied to provide insights, directions, or recommendations on how to best understand the Award's orders.

REQUEST

For all of the foregoing reasons, The Republic of Ecuador respectfully requests that the Tribunal issue an interpretation of the Award pursuant to Article 35 of the UNCITRAL Arbitration Rules.

As already explained, the Republic of Ecuador has sought in this submission to get clarification on those matters that the Republic considers material but unclear. The Republic of Ecuador has not offered argument. However, should the Tribunal wish to hear from the parties, the Republic of Ecuador would be happy to elaborate on the above and provide such further information or argument as might be helpful to the Tribunal.

Because there is a genuine dispute over the interpretation of the Award and pursuant to Article 40.4 of the UNCITRAL Arbitration Rules, the Republic of Ecuador respectfully requests that no additional fees be charged for the requested interpretation.

Finally, the Republic of Ecuador does not intend to waive any of its rights by requesting this interpretation. Furthermore, this request does not mean in any way an acceptance of the terms of the award, or recognition of the jurisdiction and competence of the Tribunal over the case brought by Claimants. The Republic of Ecuador expressly preserves all its rights, including its right to

pursue an action for setting aside the Second Partial Award on Track II, dated 30 August 2018.

Respectfully,



Íñigo Salvador Crespo
Procurador General del Estado

October 13, 2018

VIA E-MAIL

Mr. V.V. Veeder, QC
Essex Court Chambers
24 Lincoln's Inn Fields
London WC2A 3EG
United Kingdom

Prof. Vaughan Lowe, QC
Essex Court Chambers
24 Lincoln's Inn Fields
London WC2A 3EG
United Kingdom

Dr. Horacio Grigera Naón
5224 Elliott Road
Bethesda, Maryland 20816
USA

Mr. Martin Doe
Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

Ms. Jessica Wells
Essex Court Chambers
24 Lincoln's Inn Fields
London WC2A 3EG
United Kingdom

Re: PCA Case No. 2009-23; *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador*

Dear Members of the Tribunal,

Claimants write in response to Ecuador's letter dated September 28, 2018, in which it asks this Tribunal to issue an "interpretation and clarification" of the Second Partial Award on Track II dated August 30, 2018 (the "Award"), pursuant to Article 35 of the 1976 UNCITRAL Arbitration Rules.

The request for an "interpretation and clarification" is neither necessary nor appropriate. There is nothing ambiguous about the Award's text: the performance orders about which Ecuador complains either (a) leave the means of performance to Ecuador's own choosing or (b) are unequivocal and require no clarification. Ecuador's request instead appears to be but the latest ploy in Ecuador's longstanding efforts to delay, defy, and discredit this arbitration. For the reasons elaborated below, Claimants respectfully urge the Tribunal to deny Ecuador's request in its entirety.

1. Ecuador's Interpretation Request is Part of Its "Roadmap" to Discredit the Award

Ecuador's request is not made in good faith. The Tribunal issued its decision more than six weeks ago, yet Ecuador has not and cannot point to a *single* step it has taken to comply with the Award. To give one example, Ecuador should have already sent a written notification to the States where enforcement proceedings are pending to notify the authorities there of the contents of the Tribunal's decision, as the Award directed.¹ But Ecuador has not taken this simple and ministerial step, nor has it done anything else to bring itself into compliance with the Tribunal's performance orders.

Instead, Ecuador has publicly criticized the Award, vowed not to comply with it, and promised to provide further support to the very lawyers who perpetrated the Lago Agrio fraud.² For example, on September 8, 2018, the Vice President of Ecuador, Maria Alejandra Vicuña, stated that the Chevron case was a "National Cause," called for the Award to be condemned, and urged that all "efforts" be taken against the Award.³ On September 9, 2018, Ecuador's Attorney General, Iñigo Salvador, stated during a televised interview that "[t]he fact that the State picked an arbitrator and participated in the arbitration d[id] not necessarily mean that Ecuador, ultimately, was going to accept the decision."⁴ During the same interview, the Secretary to the President, Eduardo Jurado, added that Ecuador will do all in its power to challenge the Award: "As the Attorney General rightly said, this award has to be challenged. The administration has asked the Attorney General to begin actions to immediately defend the State of Ecuador, so we can request and obtain annulment of the award I repeat once again, our administration will

¹ Second Partial Award on Track II, Aug. 30, 2018 ¶ 10.13(iii). On September 7, 2018, Claimants complied with the Award's requirement that they put Ecuador "on notice" of the States to whom Ecuador should "advise promptly in writing" of the Tribunal's "declarations and orders regarding the Respondent's internationally wrongful acts comprising a denial of justice resulting from the Lago Agrio Judgment." *Id.*

² *See, e.g.*, Official Press Release, NATIONAL SECRETARY OF COMMUNICATIONS, Sept. 6, 2018, available at <https://www.comunicacion.gob.ec/gobierno-propone-acciones-legales-contra-rafael-correa/> (quoting the Secretary to the President of Ecuador, Eduardo Jurado, reinforcing the government's support for the Lago Agrio Plaintiffs and calling the Chevron case a "national cause"); On national TV, President Moreno will announce actions in the Chevron case, ECUADOR INMEDIATO, Sept. 12, 2018, available at http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=2818842609 (quoting the Secretary of Communications, Andres Michelena, stating that Ecuador had "to prepare a legal strategy. We're with the Amazon people, supporting their rights"); "ÍÑIGO SALVADOR: WE WILL VIGOROUSLY EXERCISE THE ACTIONS PROVIDED BY INTERNATIONAL LAW TO REVERSE THE ARBITRATION AWARD IN THE CHEVRON CASE," Press Release by the National Assembly, Sept. 19, 2018 (quoting Attorney General Salvador vowing to "do its utmost to make the Ecuadorian State's case in international courts against the award issued by the Permanent Court of Arbitration in The Hague"); Iñigo Salvador: 'I will renegotiate the contracts with law offices,' EL COMERCIO, Sept. 17, 2018, available at <https://www.elcomercio.com/actualidad/entrevista-inigosalvador-renegociacion-contratos-estudiosjuridicos.html> (stating that the Attorney General's "duty is to use all of the remedies that international law provides to try to avoid" the Award).

³ Vice President of Ecuador, Maria Alejandra Vicuña's Twitter Account, Sept. 8, 2018 available at <https://twitter.com/marialevicuna/status/1038533796705067008>.

⁴ TV interview of Attorney General, Iñigo Salvador, and Secretary to the President, Eduardo Jurado, Sept. 9, 2018, TELEAMAZONAS, available at <http://www.teleamazonas.com/2018/09/el-ecuador-tiene-90-dias-para-presentar-pedido-de-nulidad-de-laudo-arbitral/>.

exhaust every last appeal to defend the interests of the State of Ecuador and the Ecuadorians who live in the Amazon region.”⁵

On September 10, 2018, Attorney General Salvador met with Pablo Fajardo, the Ecuadorian lawyer whom the Tribunal found personally committed serious wrongdoing including, “bribing” supposedly neutral experts; “blackmailing . . . Judge Yáñez;” “collu[ding] with [the court appointed expert] Mr. Cabrera;” “ghostwriting” Mr. Cabrera’s Report; “bribing Dr. Guerra for drafting Judge Zambrano’s orders;” holding “inappropriate private meetings with several judges of the Lago Agrio Court;” and “covert[ly] plan[ning] for ‘ghostwriting’ the Lago Agrio Judgment.”⁶ Together, Attorney General Salvador and Mr. Fajardo discussed a “roadmap” to circumvent the Award.⁷ The next day, Attorney General Salvador publicly expressed his “absolute empathy” for the Lago Agrio Plaintiffs, confirmed that they “could work together,” and announced that the Lago Agrio Plaintiffs would also meet with the President of Ecuador.⁸ On September 14, 2018, Vice President Vicuña stated during an interview that the “fundamental” goal was to “avoid that [the Award] could effectively” be enforced.⁹ Media

⁵ TV interview of Attorney General, Íñigo Salvador, and Secretary to the President, Eduardo Jurado, Sept. 9, 2018, TELEAMAZONAS, available at <http://www.teleamazonas.com/2018/09/el-ecuador-tiene-90-dias-para-presentar-pedido-de-nulidad-de-laudo-arbitral/>.

⁶ Second Partial Award on Track II, Aug. 30, 2018 ¶ 4.378. *See also id.* at ¶¶ 4.303 (finding that “payments to Mr Cabrera were made corruptly as bribes by certain of the Lago Agrio Plaintiffs’ representatives, including Mr Fajardo”), 4.232 (concluding that “Judge Yáñez h[eld] private meetings with Messrs Donziger and Fajardo nine times more during 2006 and 2007, at his house, a warehouse and elsewhere, to discuss the withdrawal of judicial inspections and the appointment of a sole global expert”), 4.261 (concluding that “Judge Yáñez’ decision to accede to the Lago Agrio Plaintiffs’ applications was the direct result of the blackmail committed by Mr Fajardo”), 4.275 (noting Pablo Fajardo’s statement “that [Mr Cabrera] will ‘sign the report [ghostwritten by the plaintiffs] and review it.’ But all of us . . . have to contribute to that report”), 4.355 (finding that the “use of code-names indicates nefarious conduct and guilty minds by both [the email’s] sender [Fajardo] and recipient [Donziger]”), 4.412 (noting that Mr Fajardo stands to gain US\$ 363,138,720 if the corrupt Ecuadorian judgment is ever enforced), 5.229 (finding that “[Fajardo and Donziger] engaged in prolonged, malign conduct . . . in a manner that almost beggars belief in its arrogant contempt for elemental principles of truth and justice), 5.231 (finding that “Judge Zambrano, in return for his promised reward, allowed certain of the Lago Agrio Plaintiffs’ representatives, corruptly, to ‘ghostwrite’ at least material parts of the Lago Agrio Judgment (with its Clarification). These representatives included Mr Fajardo and Mr Donziger”).

⁷ Press conference given by the Lago Agrio Plaintiffs’ representatives including Pablo Fajardo, Sept. 10, 2018, available at <https://www.youtube.com/watch?v=CD4kpFFED1g&feature=youtu.be> (informing that Pablo Fajardo met that day with the Attorney General whom according to Fajardo was “very open.” Fajardo also states that “a roadmap can be established in the future for [the Lago Agrio Plaintiffs] and the Attorney General’s Office to face the Chevron case”). *See also*, Reports on statement by Pablo Fajardo’s during the same press conference, Sep. 10, 2018, available at <https://twitter.com/wambraEc/status/1039199296078471168> (posting reads “[w]ith the Attorney General’s Office of #Ecuador we will establish a roadmap to promote a just judgment in favor of those affected by #Chevron. We will go to Geneva so that our demand can be heard worldwide’ Pablo Fajardo”). *See also* Ecuador has two options to appeal the arbitration award in the Chevron case, EL UNIVERSO, Sept. 13, 2018, available at <https://www.eluniverso.com/noticias/2018/09/13/nota/6950828/dos-opciones-tiene-ecuador-impugnar-laudo-arbitral> (noting Pablo Fajardo’s endorsement of the Attorney General’s decision to file a set aside petition and clarification of the Award).

⁸ Radio interview of Attorney General, Íñigo Salvador, RADIO CENTRO, Sept. 11, 2018 available at <http://www.juiciocrudo.com/video/entrevista-radio-centro-inigo-salvador-11-sep-2018/285>.

⁹ TV interview of the Vice President of Ecuador, María Alejandra Vicuña, TC TV, Sept. 14, 2018 available at <https://www.youtube.com/watch?v=65qnUBp43Cc&feature=youtu.be>.

photographs, such as the ones in Appendix A, show Mr. Fajardo standing side-by-side with the Attorney General and other Government representatives.

Ecuador's "interpretation and clarification" request is evidently part of this coordinated "roadmap"—a misguided effort to somehow justify Ecuador's non-compliance with the Tribunal's Award. But as Attorney General Salvador has acknowledged in his public statements, this request does not suspend or affect the enforceability of the Award.¹⁰ Ecuador should therefore be bringing itself into immediate compliance with its international obligations, thereby mitigating the compensation it will owe to Claimants for their injuries, rather than attempting to discredit or circumvent the Award by devising a "roadmap" alongside the perpetrators of the Lago Agrio fraud.

2. The Award Does Not Require Interpretation

Ecuador identifies two matters allegedly requiring "interpretation and clarification": (a) the scope of the Tribunal's order directing Ecuador to "take immediate steps, of its own choosing to remove the status of enforceability from the Lago Agrio Judgment";¹¹ and (b) the meaning of the Tribunal's order that Ecuador comply "to the satisfaction of the Tribunal and as unconditional objections of result (save where otherwise indicated)."¹² Neither request is admissible under Article 35 of the 1976 UNCITRAL Arbitration Rules.

The Tribunal has broad discretion whether to exercise its powers under Article 35. "[T]he practice of the Iran-US Claims Tribunal demonstrates that an interpretation falls to be given only if the tribunal is satisfied that there is a *sound basis* for the relevant request."¹³ In *Pepsico Int'l v. Iran*, cited by Ecuador,¹⁴ the Iran-U.S. Claims Tribunal rejected an Article 35 interpretation request from Iran because an "examination of the text of the Award shows that

¹⁰ A press interview reveals Ecuador's delay strategy which contemplates lengthy multi-jurisdictional litigation including a set aside petition in the Hague and resisting enforcement: "The State has 90 days to file these requests, Salvador stressed. The court would have to rule on the interpretation in 45 days, and filing a petition to annul before the Dutch courts could take up to four years. At the end of the annulment proceeding, he added, the State would find out whether or not the award would apply. But he clarified that the petition to annul would not suspend the case. In other words, even if Ecuador files it, the arbitration will continue to its last phase, which is to determine damages. He said that he does not know how long this process will take, but not less than two years. Only at that time would Ecuador have to pay the award, if it is not annulled. He also said that if the petition to annul is denied, the company will have to get the award recognized in whichever country it intends to enforce it, and Ecuador could still litigate there." Ecuador has two options to appeal the arbitration award in the Chevron case, EL UNIVERSO, Sept. 13, 2018, available at <https://www.eluniverso.com/noticias/2018/09/13/nota/6950828/dos-opciones-tiene-ecuador-impugnar-laudo-arbitral> (quoting the Attorney General Iñigo Salvador). These comments confirm that Ecuador's strategy is one of delay and obfuscation. This request for clarification is just one component of this strategy.

¹¹ Ecuador's Letter to the Tribunal, Sept. 28, 2018, at p. 3 (quoting the Award).

¹² *Id.*

¹³ Jan Paulsson & Georgios Petrochilos, UNCITRAL Arbitration, KLUWER, pp. 339-40 (2017) (emphasis added); see also James Castello, "UNCITRAL Rules" in Dr. Frank-Bernd Weigand (ed), Practitioner's Handbook on International Commercial Arbitration, 2nd ed., OXFORD UNIVERSITY PRESS ¶ 16.357 (2009).

¹⁴ *Pepsico Int'l Corp. v. Islamic Republic of Iran*, Decision No. DEC-55-18, Dec. 19, 1986; cited in Ecuador's Letter to the Tribunal, Sept. 28, 2018 at p. 2.

there is no ambiguity with respect to any of the four items mentioned in the Respondent's submission."¹⁵ Similarly, in *American Bell v. Iran*, Iran's Article 35 request was deemed "inadmissible" by the Iran-U.S. Claims Tribunal as it was "neither a request for interpretation nor a request for correction . . . but rather a request for revision of the [t]ribunal's award."¹⁶ As summarized in *Methanex v. United States*, it is "well settled that such a request [under Article 35] is limited to an interpretation of the award in the form of clarification; and that it cannot extend to a request to modify or annul the award or take the form of an appeal or review of the award."¹⁷

As these cases illustrate, a request under Article 35 is not a vehicle for a party to express its dissatisfaction with an adverse award; rather, it should only be admitted where there is a sound basis for providing further interpretation or clarification. None exists here. The performance orders about which Ecuador complains either (a) leave the means of performance to Ecuador's own choosing or (b) are unequivocal and require no clarification.

(a) *The Tribunal's Performance Orders Are Clear and Unambiguous*

Ecuador seeks clarification on two particular performance orders—subparagraphs 10.13(i) and (vi)—which call for Ecuador to "remove the status of enforceability"¹⁸ from the Lago Agrio Judgment and to take corrective measures to "wipe out all the consequences" of its internationally wrongful acts.¹⁹ This request has things backwards. The appropriate course is for Ecuador to take affirmative actions to come into compliance with the Award and inform the Tribunal of those actions; the Tribunal can then determine in a concrete way whether or not the proposed action discharges Ecuador's obligation.²⁰ There can be no dispute about the meaning of subparagraphs 10.13(i) and (vi) unless and until Ecuador takes affirmative steps towards

¹⁵ *Pepsico Int'l Corp. v. Islamic Republic of Iran*, Decision No. DEC-55-18, Dec. 19, 1986 ¶ 3.

¹⁶ *American Bell Int'l v. Islamic Republic of Iran*, Decision No. DEC 58-48-3, 1987 ¶ 4. Likewise, under Dutch law, a request for interpretation of an award may not lead to a reconsideration of decisions made in the arbitral award. See G.J.Meijer, *T&C Burgerlijke Rechtsvordering*, Art. 1061 ¶ 1a. See also the non-binding opinion of Advocate-General Asser before the Judgement of the Dutch Supreme Court of 14 February 1997, ECLI:NL:HR:1997:ZC2276, NJ 1998/109 (*Jardin/Van Rhienen*) ¶ 2.11.

¹⁷ *Methanex Corp. v. United States*, NAFTA Tribunal's Letter Re: Request for Interpretation of Award to Christopher F. Dugan et al, Sept. 25, 2002 ¶ 6.

¹⁸ Ecuador has been under a similar obligation since 2011. On February 9, 2011, the Tribunal ordered Ecuador "to take all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of any judgment against the First Claimant in the Lago Agrio Case." Order on Interim Measures, Feb. 9, 2011 ¶ E(i). On January 25, 2012, the Tribunal issued a similar order via the First Interim Award on Interim Measures. Additionally, on February 16, 2012 and February 7, 2013, the Tribunal ordered Ecuador "(whether by its judicial, legislative or executive branches) to take all measures necessary to suspend or cause to be suspended the enforcement and recognition within and without Ecuador of the" Lago Agrio Judgment. Second Interim Award on Interim Measures, Feb. 16, 2012 ¶ 3(i); Fourth Interim Award on Interim Measures, Feb. 7, 2013 § IV(3). To date, Ecuador has failed to comply with the Tribunal's orders and Interim Awards.

¹⁹ Ecuador's Letter to the Tribunal, Sept. 28, 2018, at p. 3; Second Partial Award on Track II, Aug. 30, 2018 ¶ 10.13(i), (vi).

²⁰ The same is true for Ecuador's second complaint regarding the "satisfaction of the Tribunal" language, discussed in further detail below.

compliance. Ecuador here seeks inappropriate guidance from the Tribunal regarding how it could comply with the Award's clear directives, with the apparent and improper goal of delaying, modifying, or reducing Ecuador's obligations under those directives.²¹

Ecuador cites no authority for the arresting proposition that this Tribunal must provide it with "insights, directions, or recommendations" on how to effectuate the Award under Ecuadorian law.²² In deference to Ecuador's sovereignty, the Tribunal left it for Ecuador to determine for itself how it will discharge its international obligations. It is for Ecuador to formulate and implement mechanisms to comply with those obligations, yet there is no indication that it will do so—now or ever. This marks an abdication by Ecuador of its state responsibilities, and Ecuador's invocation of Article 35 does not and cannot alter that fact.²³

The cynical and obfuscatory nature of this request is perhaps best illustrated by Ecuador's insinuation that compliance with the Tribunal's Award could prevent Ecuador from investigating the wide-ranging fraud perpetrated through its courts. Ecuador speculates that annulling the fraudulent Judgment "may" mean that "no jurisdictional body, including by way of a criminal action, will ever have the appropriate opportunity to address the allegations of procedural fraud, judicial misconduct and ghostwriting raised by the Claimants at the time, and order an adequate remediation."²⁴ The notion that nullifying the Lago Agrio judgment would somehow prevent Ecuador from addressing the fraud or taking criminal action against the wrongdoers is preposterous, and Ecuador cites no authority for it. Furthermore, as the Tribunal is aware, Ecuador has had multiple opportunities, over the course of many years, to have various governmental entities "address" the fraud—including the courts, the Prosecutor General, and the Attorney General. It has *never* done so.²⁵

Finally, and tellingly, Ecuador's interpretation request ignores numerous other performance orders in the Award which Ecuador has taken no steps to perform, including the obligation to "advise promptly in writing any State" where the Lago Agrio Plaintiffs are seeking enforcement "of this Tribunal's declarations and orders regarding the Respondent's internationally wrongful acts."²⁶ Ecuador cannot be heard to allege ambiguity in subparagraphs

²¹ Pieter Sanders, The revision of the UNCITRAL Arbitration Rules, p. 46 (August 2009), available at https://www.arbitration-icca.org/media/4/68730030694881/media012520481290330piet_sanders_uncitral_comments.pdf (observing the need to remedy "abuse" of Article 35, such as "to obtain postponement of rendering the award which was expected to be unfavorable").

²² Ecuador's Letter to the Tribunal, Sept. 28, 2018, at p. 10.

²³ Ecuador parenthetically claims that the Republic is "currently exploring whether under Ecuadorian law the Lago Agrio Judgment could be deprived of its enforceability while protecting the human rights of the Lago Agrio Plaintiffs." Ecuador's Letter to the Tribunal, Sept. 28, 2018, at p. 6. But this argument already has been aired and shown to be without merit; there is no human right to enforce a judgment procured by fraud. Second Partial Award on Track II, Aug. 30, 2018 ¶ 9.16. In all events, this is not a matter that can be properly addressed through a request under Article 35.

²⁴ Ecuador's Letter to the Tribunal, Sept. 28, 2018, at p. 5.

²⁵ Second Partial Award on Track II, Aug. 30, 2018 ¶¶ 5.165-171, 5.178, 5.189, 5.214-15, 5.234, 5.235.

²⁶ *Id.* at ¶ 10.13(iii), (v).

10.13(i) and (vi) while it is ignoring unequivocal performance orders elsewhere in paragraph 10.13.

(b) *The Standard Applicable to the Tribunal's Performance Orders is Clear and Unambiguous*

Ecuador also asks the Tribunal to clarify its directive that Ecuador perform the orders in subparagraphs (i) through (viii) of paragraph 10.13 to “the satisfaction of the Tribunal” and as “unconditional obligations of result (save where otherwise indicated).”²⁷ But the Tribunal in these subparagraphs made clear that Ecuador is obligated to achieve the result identified in each of the subparts (i) through (viii), some of which include the means which must be followed, and others of which leave the means to Ecuador’s discretion. There is nothing ambiguous about this language.²⁸

Ecuador asks the Tribunal to explain what “specific standard” it intends to apply in deciding whether the Award is performed “to the satisfaction of the Tribunal,” and through what procedure.²⁹ The inquiry is entirely hypothetical, as Ecuador has not even attempted to comply with paragraph 10.13. Article 35 does not require the Tribunal to offer advisory opinions.³⁰ In any event, contrary to Ecuador’s suggestion,³¹ the standard articulated by the Tribunal is an objective one: whether Ecuador has achieved the ordered result.

It is perfectly proper for the Tribunal to verify Ecuador’s compliance with the obligations of result ordered in the Award. The Tribunal, having rendered its second Partial Award, retains its jurisdiction through Track III of the arbitration, which will concern the “reparation in the form of compensation” for the Claimants’ injuries, among other issues.³² Dutch law further confirms that a tribunal’s mandate only ends once it has deposited its last, final award in the Registry of the District Court.³³ Claimants’ injuries are ongoing and continue as a result of Ecuador’s failure to perform its obligations under the Award; Ecuador’s compliance with the Track II Award also forms part of its responsibility to mitigate damages in Track III. The Tribunal therefore retains the ability to consider whether Ecuador has complied with the orders in the Award to its satisfaction as part of the scope of Track III.

²⁷ Ecuador’s Letter to the Tribunal, Sept. 28, 2018 at p. 6 *et seq.*

²⁸ Again, Ecuador has had the same obligations since 2011. Order on Interim Measures, Feb. 9, 2011 ¶ E(i); First Interim Award on Interim Measures, Jan. 25, 2012; Second Interim Award on Interim Measures, Feb. 16, 2012 ¶ 3(i); Fourth Interim Award on Interim Measures, Feb. 7, 2013 § IV(3).

²⁹ Ecuador’s Letter to the Tribunal, Sept. 28, 2018 at p. 8.

³⁰ *See Methanex Corp. v. United States*, NAFTA Tribunal’s Letter Re: Request for Interpretation of Award to Christopher F. Dugan *et al.*, Sept. 25, 2002 ¶ 13 (rejecting that Claimant’s request for interpretation of what the *Methanex* Tribunal meant when it ordered Claimant to file a “fresh pleading” on certain issues and stating that “it cannot be for this Tribunal to instruct Methanex what should and should not be pleaded in its fresh pleading”).

³¹ Ecuador’s Letter to the Tribunal, Sept. 28, 2018 at pp. 7-8.

³² Second Partial Award on Track II, Aug. 30, 2018 ¶¶ 10.14, 10.17, 10.19, 10.20, 10.21.

³³ Art. 1058(3) of the Dutch Code of Civil Procedure.

* * *

Ecuador continues to flout its obligations under international law, instead allying itself with the Plaintiffs' representatives found by the Tribunal to have engaged in fraud and corruption. As shown above, there is no sound basis for invoking Article 35. Rather, Ecuador with this request is in effect seeking to enlist the Tribunal itself as an unwitting accomplice in undermining the efficacy of its Award. Claimants respectfully request that the Tribunal refrain from allowing Ecuador to continue to evade its international obligations and promptly deny Ecuador's request in its entirety.

Respectfully,

A handwritten signature in black ink, appearing to read "R. Doak Bishop". The signature is written in a cursive, flowing style.

R. Doak Bishop

cc: All counsel of record

Appendix A³⁴



Carlos Viteri - National Assemblyman

Sofia Espin - Assemblywoman representing the province of Guayas

Jaime Candell - Assemblyman representing the province of Santa Elena, member of the Audit Commission of the National Assembly

Kharla Chavez - Assemblywoman representing the province of Los Rios, Vicepresident of the Audit Commission of the National Assembly

Iñigo Salvador - Attorney General of Ecuador

José Ignacio Yopez - Assemblyman for a day (A project in Ecuador where people can participate for a day in National Assembly meetings without the right to vote)

Pablo Fajardo - Plaintiffs' attorney

María Jose Carrion - Assemblywoman representing the province of Pichincha, President of the Audit Commission of the National Assembly

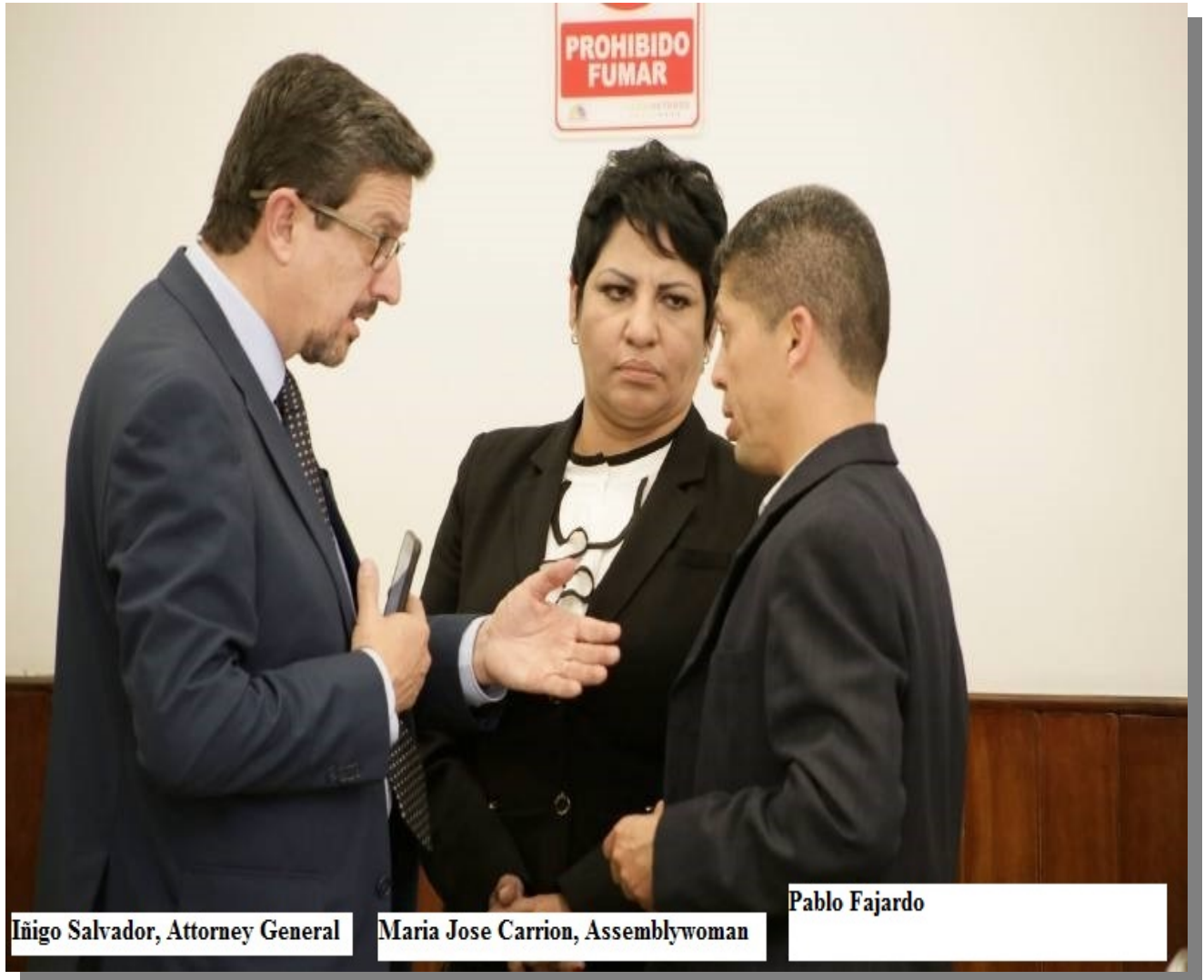
Daniel Mendoza - Assemblyman representing the province of Manabi, member of the Audit Commission of the National Assembly

³⁴ Photographs published by the Office of the Attorney General, available at <https://www.flickr.com/photos/127990440@N08/sets/72157669644435837>. See also photographs published by Ecuador's National Assembly, available at <https://www.flickr.com/photos/asambleanacional/sets/72157671191470107>. These photographs were taken on September 12, 2018 and September 19, 2018 during official meetings between the Attorney General, Pablo Fajardo, and a Committee of Ecuador's National Assembly to discuss the Chevron case.



Pablo Fajardo

Iñigo Salvador, Attorney General



Iñigo Salvador, Attorney General

Maria Jose Carrion, Assemblywoman

Pablo Fajardo



Iñigo Salvador, Attorney General

Pablo Fajardo

November 1, 2018

VIA E-MAIL

Mr. V.V. Veeder, QC
Essex Court Chambers
24 Lincoln's Inn Fields
London WC2A 3EG
United Kingdom

Prof. Vaughan Lowe, QC
Essex Court Chambers,
24 Lincoln's Inn Fields
London WC2A 3EG
United Kingdom

Dr. Horacio Grigera Naón
5224 Elliott Road
Bethesda, Maryland 20816
USA

Mr. Martin Doe
Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

Ms. Jessica Wells
Essex Court Chambers
24 Lincoln's Inn Fields
London WC2A 3EG
United Kingdom

Re: PCA Case No. 2009-23; Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador

Dear Members of the Tribunal,

Pursuant to the Tribunal's Procedural Order No. 53 dated October 19, 2018, the Republic of Ecuador (the "Respondent" or "Ecuador") writes in response to the Claimants' letter dated October 13, 2018.

The Republic of Ecuador deeply regrets that Claimants have not submitted any legal argument or legal reasoning regarding the serious and *bona fide* request made by Ecuador to the Tribunal to give an interpretation of its Second Partial Award on Track II pursuant to Article 35(1) of the UNCITRAL Arbitration Rules.

Ecuador has identified unclear orders in the operative part of the award as well as other discreet, but important, ambiguities which have great practical

relevance to the Award's validity and implementation, particularly in relation to the Tribunal's Part X, Section "D: Orders as to the Merits"¹ (the "Orders as to the Merits" or "the Performance Orders").

Claimants have enhanced such uncertainties in their letter dated September 7, 2018² (the "September 7 Letter"), by requesting "*that, **based on the Tribunal's findings and as a matter of the integrity of the Ecuadorian judicial system, Ecuador take steps to nullify the Lago Agrio Judgment in its entirety under Ecuadorian law.***"³

It appears from their letter that Claimants interpret the Tribunal's findings as an obligation on Ecuador not only to (i) nullify the Lago Agrio Judgement, but also (ii) to do it in its entirety. Ecuador differs on such an interpretation, reason why the requested clarification of the Tribunal's Orders as to the Merits is all the more important.

Below, the Republic of Ecuador will address the following matters:

1. Claimants' baseless and unsupported accusations that "*Ecuador's Interpretation Request is Part of Its 'Roadmap' to Discredit the Award.*"⁴
2. Claimants' unfounded allegations that "*The Award Does Not Require Interpretation.*"⁵

¹ Second Partial Award on Track II, Aug. 30, 2018 ¶ 10.13

² Claimants' Letter to the Republic of Ecuador, Sept. 07, 2018. See Annex 1.

³ *Id.* at p.2 (emphasis added).

⁴ Claimant's Letter to the Tribunal, Oct. 13, 2018, at p. 2.

⁵ *Id.* at p. 4.

1. CLAIMANTS' BASELESS AND UNSUPPORTED ACCUSATIONS THAT "ECUADOR'S INTERPRETATION REQUEST IS PART OF ITS 'ROADMAP' TO DISCREDIT THE AWARD".

Ecuador considers that Claimants' accusations lack relevance in such an important procedure. Claimants have not submitted any serious legal argument that could be taken into consideration. However, for the sake of clarity, and in order to expose the groundless assertions submitted by Claimants, Ecuador will respond to these accusations, mainly by informing the Tribunal about the steps taken in connection with the Award (a); demonstrating that Ecuador has a clean record complying with awards (b); showing that Claimants' allegations have no relation with the substance of Ecuador's request for interpretation (c); emphasizing that post-award remedies constitute a right and not a "roadmap" to discredit the Award (d); and, reiterating that this procedure should deal with legal issues and not with political statements (e).

a) Steps taken in connection with the Award

Claimants refer to Ecuador as if it was a single and private person who can act as fast as it pleases. However, as Claimants' well know, Ecuador is a state with its organs and public institutions, each with precise and limited powers and attributions.

Representatives of the Republic of Ecuador had a meeting, read the Second Partial Award on Track II dated August 30, 2018 and debriefed on its meaning, when unambiguous, and its consequences. Based on this debriefing, Ecuadorian Representatives are analyzing steps and measures consistent with the relevant domestic law, before the State can undertake to implement the award.

Consequently, contrary to Claimants' allegation that "Ecuador has not and cannot point to a *single* step it has taken to comply with the Award", the Republic of Ecuador has already adopted, where possible, reasonable measures "to bring itself into compliance with the Tribunal's performance orders."⁶

The first step adopted by the Office of the Attorney General was to communicate the award to its highest government officials. Unfortunately, the Tribunal's orders are not all as "clear and unambiguous" as Claimants wish to make believe. Precisely because of these ambiguities and unclarities causing uncertainty, the Republic of Ecuador has requested the Tribunal to interpret core passages of its Orders.

⁶ *Id.* at p. 2.

Additionally, the Office of the Attorney General has (i) advised the Presidency of the Republic of Ecuador⁷ and the Office of the General Prosecutor⁸ about the award and (ii) submitted a copy of the Award to both offices. Ecuador believes the actions adopted are reasonable while waiting for the Tribunal's interpretation.

Hence, it is simply not true that the Respondent has not taken a single step to comply with the award. Nevertheless, it is necessary to stress that this particular award raises questions regarding its implementation that are unusual. Among others, they concern the scope of Ecuador's obligations to remove the status of enforceability from the Lago Agrio judgment, and the threshold that must be fulfilled in order to satisfy the Tribunal.

b) Ecuador complies with final Awards

Claimants are trying to divert the attention of the Tribunal from the core discussion before the Tribunal: the request for interpretation and how the operative part of the award should be interpreted.

Claimants seem to have forgotten that the Republic of Ecuador has complied with final arbitral awards. PCA Case No. AA277 (*Chevron Corporation and Texaco Petroleum Company v. the Republic of Ecuador*) referred to by this Tribunal as the *Commercial Cases Arbitration*, is a good example. On July 22, 2016, after exercising its right to set aside the award before the Courts of The Netherlands⁹, which the Republic of Ecuador lost despite the Dutch Attorney General's favourable opinion, it paid Chevron more than US\$ 112 million in full satisfaction of the Commercial Cases award.¹⁰ In their response, Claimants deliberately ignore Ecuador's consistent record of compliance with international obligations, particularly those arising out of arbitral awards, and allege that Ecuador pretends to evade its international obligations. That is simply not true.

⁷ Attorney General's Official Letter No. 1095 to Ecuador's President, Oct. 17, 2018. *See*, Annex 2 (original document in Spanish and translation).

⁸ Attorney General's Official Letter No. 1094 to the Prosecutor General of Ecuador, Oct. 17, 2018. *See*, Annex 3 (original document in Spanish and translation).

⁹ Action in which Ecuador did not have success despite the Dutch Attorney General's favorable opinion.

¹⁰ Other examples of Ecuador's compliance with international awards are: (i) Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador, ICSID Case No. ARB/06/11; (ii) Burlington Resources Inc. v. Republic of Ecuador, ICSID Case No. ARB/08/5; (iii) Copper Mesa Mining Corporation v. Republic of Ecuador, PCA Case No. 2012-2; among others.

c) Claimants' allegations have no relation with the substance of Ecuador's request

The core of Claimants' response is that Ecuador's request for interpretation is an attempt to discredit the Award. That is another unfounded assertion. Claimants' accusations are yet another attempt to allege collusion between the Republic of Ecuador and the Lago Agrio Plaintiffs' Representatives, an allegation that has already been rejected by the Tribunal.

These arguments are completely speculative and irrelevant and do not regard the request for interpretation submitted by Ecuador.

Respondent's request is a *bona fide* effort to obtain guidance on how Ecuadorian Authorities should understand the Tribunal's orders and subsequently balance Ecuador's international and national obligations, in order to proceed with the Award's implementation avoiding unnecessary costs and risks. Therefore, assuming that Claimants are also interested in Ecuador's compliance with the Tribunal's Award, instead of opposing Respondent's *bona fide* request, they should support it.

d) Post-Award remedies constitute a right, not a roadmap to discredit the Award

Claimants repeatedly refer to Ecuadorian authorities' political and public statements about Ecuador's intention to apply for available post-award remedies. In their letter, Claimants even affirm that Ecuador's interpretation request is not made in good faith.¹¹ The Tribunal cannot and should not take political statements into consideration when assessing Ecuador's request.

First, among the most important duties owed by a Tribunal to the parties to an arbitration, is that it must render a coherent, accurate and complete award. Ambiguities might taint the award and may even compromise its validity. If a party considers that the award is not coherent, accurate or complete, it may apply for any of the limited, but available, post-award remedies as any other party to an arbitration. Ecuador is legally entitled to commence any post-award proceeding available under the applicable rules – i.e. interpretation, correction, addition or annulment of an award–.

This is the reason why Ecuador has respectfully exercised its right to ask the Tribunal to interpret certain passages of its award, before Ecuador takes additional steps to implement the Tribunal's orders.

¹¹ Claimant's Letter to the Tribunal, Oct. 13, 2018, at p. 2.

Second, the fact that Ecuador examines whether there is a need to apply for setting aside the Award in The Netherlands (i) does not discredit the seriousness of the Republic of Ecuador’s request, and (ii) does not mean that, as Claimants affirm, Ecuador plans a “delay strategy which contemplates lengthy multi-jurisdictional litigation including a set aside petition in The Hague and resisting enforcement.”¹²

The *lex arbitri* distinguishes between different remedies that may be available against an arbitral award, among which we can find the setting aside or reversal of arbitral awards. If a party considers that there are grounds for it, there is nothing wrong in pursuing those remedies. As Professor ALBERT JAN VAN DEN BERG confirms, “*as long as arbitration has existed as an alternative to litigation in court, the award has been subject to some form of judicial review. This was the case under Roman law, in the Middle Ages and under the Napoleonic Codes.*”¹³ Prof. VAN DEN BERG also analyses whether the setting aside of the arbitral award should be abolished, and he concludes in the negative.¹⁴

As stated by GARY BORN, there are circumstances in which a party may conclude “*an award against it is fundamentally wrong*” and in these cases, “*parties may seek to annul or set aside the award against it*”¹⁵. Even if the setting aside of arbitral awards is an extraordinary and restricted legal remedy, if provided by the national law, it is always available for all the parties to an arbitration.

The right of a party to apply for the annulment of the award is recognized in most national arbitration laws. This recognition shows that “[*national*] courts may also intervene to guarantee that the minimum requirements of procedural fairness are fulfilled and exercise a supervisory function.”¹⁶

A decision of a U.S. appellate court in Yusuf Ahmed Alghanim & Sons WLL v. Toys “R” Us, Inc., interpreting Article V of the New York Convention, confirms the supervisory authority of domestic courts:

¹² *Id.* At p. 4 (footnote 10)

¹³ Albert Jan van den Berg, ICSID Review, p. 3 (2014), available at: https://www.arbitration-icca.org/media/van_den_berg_setting_aside_icsid_review_2014.pdf.

¹⁴ See, *Id.* at p. 26.

¹⁵ Gary Born, International Commercial Arbitration, 2nd ed., KLUWER, p. 3164 (2014).

¹⁶ Julian D.M. Lew, Loukas Mistelis, et al., Comparative International Commercial Arbitration, KLUWER, p. 356 (2003).

“There is no indication in the Convention of any intention to deprive the rendering state of its supervisory authority over an arbitral award, including its authority to set aside that award under domestic law.”¹⁷

Under several legislations, it may not be even possible to waive the right to set aside an award¹⁸ considering that such waiver is in breach of the right to be heard, which is guaranteed by several International Human Rights Conventions.¹⁹ Furthermore, Ecuador has not waived its right to pursue set aside proceedings.

Ecuador has the right to apply for any post-award remedy available under the applicable rules of arbitration and the *lex arbitri*. If Ecuador decides to legitimately exercise its rights, its decision (i) cannot affect it adversely in the remaining arbitral proceedings, (ii) should not be understood as if it intends to evade its international obligations, and (iii) should not be considered as if Ecuador is unwilling to implement the Tribunal’s orders.

e) Dealing with legal issues and not with political statements

The Tribunal should only address legal issues, not political allegations. Respondent’s request for interpretation is based on purely legal issues and Ecuador will not discuss any political or public statement made by any Ecuadorian Authority which has been stripped of all context in Claimants’ response.

The Tribunal has the authority to decide the case based on demonstrated facts and legal grounds rather than political statements. Had the Tribunal wished to decide on political statements, the Tribunal should also consider the ongoing disrespectful statements made by Claimants against the Lago Agrio Plaintiffs and the Republic of Ecuador. To cite some examples:

- “We’re not paying and we’re going to fight this for years if not decades into the future.”²⁰

¹⁷ Yusuf Ahmed Alghanim & Sons WLL v. Toys “R” Us, Inc., 126 F.3d 15, 21-22 (2d Cir. 1997).

¹⁸ See, United States of America, *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008). See also, New Zealand, *Methanex Motunui Ltd v Spellman* [2004] 3 NZLR 454 (CA). Also, arbitration laws of Poland, Italy, Germany, Panama, Brazil, some Provinces of Canada (Alberta), etc.

¹⁹ European Convention on Human Rights §1 of Article 6.

²⁰ See, website printout of Wall Street Journal online article, *Chevron Looks for Home-Field Advantage In Ecuador Fight*, dated July 20, 2009, available at <http://blogs.wsj.com/law/2009/07/20>; taken from Civil Action No: 1:11-cv-00691-LAK, Declaration of Juan Pablo Sáenz M., available at: <https://amlawdaily/saenz>.

- “[We] will fight until hell freezes over and then fight it out on the ice.”²¹
- “We can’t let little countries screw around with big companies like this—companies that have made big investments around the world.”²²

Lastly, Ecuador kindly requests the Arbitral Tribunal to remember that high-level officials of the Government have duties towards its citizens. As shown by the pictures provided by Claimants in their response letter²³, on September 12 and September 19, 2018, Attorney General of Ecuador, Dr. Íñigo Salvador Crespo, attended two meetings upon requests made by the Supervisory Commission of Ecuador’s National Assembly. This Commission is legally entitled to request for information and supervise the actions of Ecuadorian governmental institutions.²⁴ The meeting concerned the Chevron Case and the recent award rendered in the arbitration.

Claimants are particularly concerned with Mr. Fajardo’s attendance to the Supervisory Commission meeting. It is not unreasonable, nor the grounds for any suspicious inference of a “roadmap”, that the National Assembly requests the presence of one of the persons involved in the facts addressed by this Tribunal in its Track II Award. The Supervisory Commission of the National Assembly has investigative authority. Mr. Fajardo was one of the Lago Agrio Plaintiff’s representatives described in the Award, and the Award concerns the Lago Agrio Plaintiff’s rights.²⁵

The attendance of the Attorney General and Mr. Fajardo to the Supervisory Commission’s meeting cannot be understood, under any circumstances, by the Tribunal – or the Claimants – as if Ecuador was “devising a ‘roadmap’ alongside the perpetrators of the Lago Agrio Fraud”²⁶. No roadmap has been traced to discredit the Award. If anything, it is Claimants’ roadmap to discredit Respondent’s reputation as well as its *bona fide* request for interpretation.

²¹ See, website printout of article by John Otis, *Chevron vs. Ecuadorean Activists*, The Global Post, May 3, 2009, available at: <http://www.globalpost.com/dispatch/the-americas/090429/chevronecuador>; taken from Civil Action No: 1:11-cv-00691-LAK, Declaration of Juan Pablo Sáenz M., available at: <https://amlawdaily/saenz>.

²² *Id.*

²³ Claimant’s Letter to the Tribunal, Oct. 13, 2018, Appendix A.

²⁴ Constitution of the Republic of Ecuador, 2008: “Art. 120.- The National Assembly shall have the following attributions and duties, in addition to those determined by law: (...) 9. To supervise the acts of the Executive, Electoral and Transparency and Social Control functions, and the other organs of the public power, and to require the servants and public servants the information that they consider necessary therefor.”

²⁵ For example: Second Partial Award on Track II ¶¶ 10.7, 10.8, and 10.12.

²⁶ Claimants’ Letter to the Tribunal, Oct. 13, 2018, p. 4.

2. CLAIMANTS' ALLEGATIONS THAT "THE AWARD DOES NOT REQUIRE INTERPRETATION".

Claimants assert that Ecuador's interpretation and clarification request is "neither necessary nor appropriate", that "[t]here is nothing ambiguous about the Award's text, and that "the performance orders about which Ecuador complains" leave the means of performance to Ecuador or "are unequivocal."²⁷

In its request for interpretation, Ecuador is simply seeking a clarification of unclear orders and trying to avoid non-compliance with the Tribunal's mandate. Claimants' rhetoric reveals their intention to increase confrontation and aggravate the dispute. In contrast, Ecuador is seeking a *bona fide* interpretation in the spirit of cooperation and facilitation of relationships between the Parties to this dispute, while also preserving its rights and the rights of the people and communities involved directly and indirectly in this dispute.

Claimants accuse Ecuador's request to be "*the latest ploy in Ecuador's longstanding efforts to delay and discredit this arbitration*"²⁸, and "*part of [a] coordinated "roadmap" – a misguided effort to somehow justify Ecuador's non-compliance with the Tribunal's Award.*"²⁹

These are nothing but unfounded accusations. Claimants respond to a reasonable request aimed at clarifying the scope of obligations and rights of the Parties with unsupported assertions and distorted portrayals of actions legitimately conducted by Ecuadorian officials pursuant to their constitutional and legal duties. In the context of Ecuador's specific request for interpretation, instead of exchanging legal arguments, Claimants have decided to deploy yet another set of disparaging indictments against Ecuador.

As already explained in detail, Claimant's random and decontextualized references are part of a bad faith strategy to discredit Attorney General Salvador and other public officials before this Tribunal. Regrettably, Claimants have resorted to this misguided effort in light of their absence of valid arguments to oppose Ecuador's request for interpretation.³⁰ Respondent's application for

²⁷ Claimants' Letter to the Tribunal, Oct. 13, 2018, p.1.

²⁸ *Id.*

²⁹ *Id.*, at p. 4.

³⁰ See, footnote 10, Claimants' Letter to the Tribunal, Oct. 13, 2018, p. 4. ; Claimants asserting that "*A press interview reveals Ecuador's delay strategy which contemplates lengthy multi-jurisdictional litigation including a set-aside petition.*" It is non sequitur that Ecuador asks the Tribunal for guidance, directions, and clarification of the Award's performance orders if its strategy would be to delay compliance with these orders.

interpretation is appropriate and substantively correct because of the following reasons: the interpretation of the Award is not only permissible but also necessary (a); Claimants do not have a clear understanding of the Performance Orders (b); Claimants' interpretation of the Performance Orders confirms that the Performance Orders are not clear (c); and, the Orders as to the Merits (paragraph 10.13) exceed the Tribunal's mandate (d).

a) Interpretation of the Award is not only permissible but necessary

Ecuador agrees with Claimants in that the Tribunal has discretion whether to interpret an Award under Article 35 of the 1976 UNCITRAL Arbitration Rules. But Claimants' erroneously assert that Ecuador's request is not admissible under Article 35.³¹ Ecuador has identified and pointed to ambiguities in the text of the Award which merit a clarification, especially because the unclear and ambiguous terms involve performance orders that will affect the rights and obligations of the parties. There is a real need to clarify the meaning of the Award.

Interpretation provides a means for clarification of the Award by resolving ambiguities and vagueness in its terms.³² This procedure is useful in the context of a continuing relationship, "*where because of the award's unclear terms **the parties require further guidance** from the arbitral tribunal on the meaning of their future obligations.*"³³ Here, an interpretation is necessary to assist the parties in understanding and satisfying their obligations under the Award.

Claimants refer to the outcome of *Pepsico Int'l v. Iran*.³⁴ However, the relevance of *Pepsico Int'l v. Iran* for this request lies not in the outcome of it, but in the test applied by the Iran-U.S. Claims Tribunal - *that interpretation is necessary when the language of the award is ambiguous*.³⁵

³¹ Claimants' Letter to the Tribunal, Oct. 13, 2018, p. 4.

³² David D. Caron, Lee M Caplan, *The UNCITRAL Arbitration Rules: A Commentary*, 2nd ed., Oxford University Press, p.802 (2015).

³³ *Id.* (emphasis added)

³⁴ *Pepsico Int'l Corp. v. Islamic Republic of Iran*, Decision No. DEC-55-18, Dec. 19, 1986; cited by Claimants' Letter to the Tribunal, Oct. 13, 2018, at pp. 4-5.

³⁵ Iran-US CTR. *Pepsico, Inc. v. Islamic Republic of Iran*, Dec. No 18(260-18-1), (13 October 1986), 328-329.

In contrast to *Pepsico Int'l v. Iran*, in this case the text of the Award is ambiguous and unclear with respect to the Orders as to the Merits set out in paragraph 10.13 (or “the Performance Orders”).

First, the Performance Orders contain open-ended commands that do not allow for a precise determination of a corresponding course of action. The Arbitral Tribunal ordered Ecuador to comply with its orders “to the satisfaction of the Tribunal”. The Tribunal’s ambiguity is evident in the order contained in subparagraph 10.13(i) “take immediate steps, of its own choosing to remove the status of enforceability from the Lago Agrio Judgment”.³⁶

Also, ambiguities exist in subparagraph 10.13 (ii):

*“take immediate steps, of its own choosing, to preclude any of the Lago Agrio Plaintiffs, any “trust” purporting to represent their interests (including the “Frente de Defensa La Amazonia”), any of the Lago Agrio Plaintiffs’ representatives, and any non-party funder from enforcing any part of the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts), directly or indirectly, whether by attachment, arrest, interim injunction, execution or howsoever otherwise”*³⁷

But, especially order contained in subparagraph 10.13(vi) is extremely wide in scope and its result is not clear at all:

*“(vi) take corrective measures, of its own choosing, to “wipe out all the consequences” of all the Respondent's internationally wrongful acts in regard to the Lago Agrio Judgment (as also decided by the Lago Agrio Appellate, Cassation and Constitutional Courts), within the meaning of Article 31 of the International Law Commission's Articles on State Responsibility, excepting only reparation in the form of compensation (as to which, see Section E below).”*³⁸

Second, the language of the heading of paragraph 10.13 establishes a directive that the Performance Orders are to be complied with “to the satisfaction of the Tribunal” and “as unconditional obligations of result (save where otherwise indicated).”³⁹ There are no parameters to discern what course of action could eventually be considered to *the satisfaction of the Tribunal*. This is an ambiguity

³⁶ Second Partial Award on Track II ¶ 10.13(i)

³⁷ Second Partial Award on Track II ¶ 10.13(ii)

³⁸ *Id.*, ¶ 10.13(vi)

³⁹ *Id.*, ¶ 10.13

that could carry important current and future consequences for the Award, as explained in detail below in subsection d).

Additionally, in contrast to *American Bell v. Iran*⁴⁰, cited by Claimants, Ecuador is not seeking here revision or a reconsideration of the decisions made in the arbitral award, but it is requesting a permissible interpretation of the award in the form of clarification, as Claimants have specified in their reference to *Methanex v. United States*, (“It is well settled that such a request [under Article 35 of the 1976 UNCITRAL Rules] is limited to an interpretation of the award in the form of clarification”).⁴¹ Ecuador has a sound basis for requesting the Tribunal to clarify the Performance Orders contained in the Award.

Similarly, Claimants argue that under Dutch law, a request for interpretation of an award may not lead to a reconsideration of decisions made in the arbitral award.⁴² Nothing in Ecuador’s request can be construed as requesting a reconsideration of the decisions made in the arbitral award. Furthermore, as set in more detail below in subsection d), absent an authoritative interpretation by this Tribunal, especially in regard to the standard imposed by the Tribunal for compliance with its Performance Orders (“to the satisfaction of the Tribunal”), important implications under Dutch law may arise.

For the avoidance of any doubt, it has been well-settled, as confirmed in *Wintershall AG v. Qatar*, that “there is no provision in the Netherlands Arbitration Act 1986 excluding the Parties from agreeing to an interpretation and their agreement under [1976] UNCITRAL Article 35 is, in the Tribunal’s opinion, controlling.”⁴³ Interpretation of an Award under Article 35 of the UNCITRAL rules is not barred under Dutch Law.

Similarly, as also confirmed in *Wintershall AG v. Qatar*, Dutch Law provisions providing for the *res judicata* effect of a partial award in no sense

⁴⁰ *American Bell Int’l v. Islamic Republic of Iran*, Decision No. DEC 58-48-3, 1987; cited by Claimants’ Letter to the Tribunal, Oct. 13, 2018, p.5 (“Iran’s Article 35 request was deemed “inadmissible” by the Iran-U.S. Claims Tribunal as it was “neither a request for interpretation nor a request for correction . . . but rather a request for revision of the [t]ribunal’s award”).

⁴¹ “As summarized in *Methanex v. United States*, it is “well settled that such a request [under Article 35] is limited to an interpretation of the award in the form of clarification; and that it cannot extend to a request to modify or annul the award or take the form of an appeal or review of the award.”; Claimants Letter to the Tribunal, Oct. 13, 2018, p. 5, citing *Methanex Corp. v. United States*, NAFTA Tribunal’s Letter Re: Request for Interpretation of Award to Christopher F. Dugan et al, Sept. 25, 2002, ¶ 6.

⁴² Claimants Letter to the Tribunal, Oct. 13, 2018, p. 5; footnote 16.

⁴³ *Wintershall AG, et al and Government of Qatar*, Final Award (May 31, 1988) (Ad Hoc Proceeding, 1976 UNCITRAL Rules, Concession Agreement), 28 ILM 834, 834–36. ¶ 4.

*deprives the Parties of the ability to agree to an interpretation of a partial award under Article 35 of the [1976] UNCITRAL Rules.*⁴⁴

There is no basis for Claimants' suggestion that Ecuador's request for interpretation and clarification is not permissible under Article 35 of the UNCITRAL Rules and under Dutch Law.

b) Claimants do not have a clear understanding of the Performance Orders

Claimants state that Ecuador's request regarding subparagraphs (i) and (vi) "*has things backwards.*"⁴⁵ And subsequently Claimants propose that "*the appropriate course is for Ecuador to take affirmative actions to come into compliance with the Award and inform the Tribunal of those actions; the Tribunal can then determine in a concrete way whether or not the proposed action discharges Ecuador's obligation.*"⁴⁶ Claimants have a very convenient interpretation of the Performance Orders.

But this is a preposterous proposition. Such a reading implies that the State should allocate public resources and engage in complex efforts to take steps pursuant the Award while guessing if such actions would be deemed sufficient as to discharge Ecuador's obligations.

This is too much of a comfortable position for Claimants, who then argue that "*there can be no dispute about the meaning of subparagraphs 10.13(i) and (vi) unless and until Ecuador takes affirmative steps towards compliance.*"

Claimant's interpretation of subparagraphs 10.13(i) and (vi) would be to the detriment of Ecuador.

Claimants' interpretation would cause unclear consequences for Track III of this arbitration, and particularly it could affect the determination of any reparation in the form of compensation that can be evaluated in Track III.

Claimants contend that Ecuador's request for guidance is inappropriate and appears to prefer unclear and open-ended directives from the Tribunal. If certain determinations in Track III are dependent on the level of compliance with

⁴⁴ *Id.* See also at ¶ 4 ("the principle of res judicata prevents the re-opening of necessarily decided points. It does not prevent the clarification of a decision nor the giving of a decision on points which an award has left undecided.").

⁴⁵ Claimants Letter to the Tribunal, Oct. 13, 2018, p. 5.

⁴⁶ *Id.*

the performance orders, Claimants would have an incentive to oppose any step taken by Ecuador pursuant the Award.

Such opposition would potentially support Claimants' arguments for damages. Without clear unambiguous parameters, Ecuador would be left guessing if any step complies with the Award. As Claimants have already revealed, their calculation of damages could be contingent on Claimants opposition to any step taken by Ecuador pursuant the award.⁴⁷ The more disputes Claimants bring before the Tribunal with regard to the Performance Orders, the more aspects Claimants would seek to introduce as elements in Track III, however improper.

Claimants assert *"[i]t is for Ecuador to formulate and implement mechanisms to comply with"* the obligations set out in the Award, and that Ecuador's request for interpretation and clarification *"marks an abdication by Ecuador of its state responsibilities, and Ecuador's invocation of Article 35 does not and cannot alter that fact."*⁴⁸ Contrary to these assertions, Ecuador is seeking to better understand the mechanisms that could be formulated to implement its obligations pursuant the Award. Ecuador acknowledges the real fact that the Award's performance orders are at odds with the current mechanisms established in Ecuadorian law. Thus, Ecuador seeks guidance from the Tribunal as to their Performance Orders. There is nothing "improper" or "arresting" about this request.

Establishing mechanisms on the basis of general, open-ended, and unclear Performance Orders could not produce the outcomes desired by the Tribunal. Article 35 gives the Tribunal the possibility to clarify its Performance Orders. Such clarification would, in turn, give Ecuador the possibility to comply with its obligations.

c) Claimants' interpretation of the Performance Orders confirms that the Performance Orders are not clear

Although Claimants insist that the Performance Orders in the Award are clear and unambiguous, Claimants' demands in their September 7, 2018 letter to Ecuador reflect a confusing understanding of the Tribunal's orders.

⁴⁷ See, Claimants Letter to the Tribunal, Oct. 13, 2018, at p. 7. "Claimants' injuries are ongoing and continue as a result of Ecuador's failure to perform its obligations under the Award; Ecuador's compliance with the Track II Award also forms part of its responsibility to mitigate damages in Track III."

⁴⁸ *Id.* p.6.

Their letter contains what appears to be two related requests. First, Claimants “demand” that Ecuador comply with the Award by “*immediately taking all steps necessary to remove the status of enforceability from the Lago Agrio Judgment*”⁴⁹, clearly borrowing the Award’s language in subparagraph 10.13(i). Subsequently, Claimants also request that “*as a matter of the integrity of the Ecuadorian judicial system, Ecuador take steps to nullify the Lago Agrio Judgment in its entirety under Ecuadorian law.*”⁵⁰

As it was explained in more detail in Ecuador’s Request for Interpretation, “*removing the status of enforceability from the Lago Agrio Judgment*” and “*nullifying the Lago Agrio Judgment in its entirety*” are different concepts and could carry different procedural and substantive consequences. Claimants have avoided elaborating as to any of these mechanisms and its implications under Ecuadorian law, or international law. Instead, Claimants prefer to oversimplify and confuse the Tribunal’s Orders.

Per Claimants’ letter of September 7, 2018, and given the unclear nature of subparagraphs 10.13(i) and (vi), it is impossible for Ecuador to tell what exactly Claimants, and if they were to be followed for that matter the Tribunal, are asking:

- i. Are Claimants asking Ecuador to take measures so that the Judgment (and only the Judgment) ceases to exist as a matter of Ecuadorian law? Such interpretation could reasonably follow from Claimants' demand that Ecuador take steps “*to nullify the Lago Agrio Judgment in its entirety under Ecuadorian law.*” But in any case, “nullifying” only the Lago Agrio Judgment could also mean that the Lago Agrio Litigation would survive and another Judge could adjudicate properly?
- ii. Are Claimants asking that Ecuador take measures to “nullify” the entire Lago Agrio Litigation from its conception? This interpretation would clearly run against several determinations of the Tribunal in previous decisions and in the Track II Award:
 - a. In Decision on Track IB Issues, dated 12 March 2015, the Tribunal decided: “(1) *The Lago Agrio Complaint of 7 May 2003, as an initial pleading, included individual claims resting upon individual rights under Ecuadorian law, not falling within the scope of the 1995 Settlement Agreement (as invoked by the Claimants);* (2) *The Lago Agrio Complaint was not wholly barred at its inception by res judicata, under Ecuadorian law, by virtue of the 1995*

⁴⁹ Claimants’ Letter to the Republic of Ecuador, Sept. 07, 2018.

⁵⁰ *Id.*

*Settlement Agreement (as invoked by the Claimants); and (3) The Lago Agrio Complaint included individual claims materially similar, in substance, to the individual claims made by the Aguinda Plaintiffs in New York.*⁵¹ In the Track II Award, the Tribunal confirmed its Decision on Track IB Issues of 12 March 2015.⁵²

- b. In the Track II Award, the Tribunal clearly declares and confirms “[f]or the avoidance of doubt” that *“neither this Award nor any of its earlier awards, orders and decision precludes a claim by any of the Lago Agrio Plaintiffs against the First or Second Claimants made for personal harm in respect of his or her individual rights, not being a diffuse claim within the meaning of the 1995 Settlement Agreement.”*⁵³

Additionally, the Tribunal’s language in the Track II Award reflects a clear goal to preserve the individual rights of the Lago Agrio Plaintiffs. This goal is manifest in Part VIII of the Track II Award where the Tribunal clarifies that *“the Tribunal bears in mind that similar environmental issues may yet be argued anew by the Aguinda or Lago Agrio Plaintiffs in resumed legal proceedings against Chevron, TexPet or Texaco. Albeit not binding upon these Plaintiffs, a decision by the Tribunal here ... could prejudice the determination of these issues.”*⁵⁴

Nullifying the entire Lago Agrio Litigation would precisely have the effect of precluding any individual right or claim by any of the Lago Agrio Plaintiffs against Chevron, TexPet or Texaco for personal harm, because the Statute of Limitations for such claims has already run. Claimants would probably endorse this type of improper interpretations as part of their permanent efforts to avoid any liability. Even though this interpretation of the Performance Orders is obviously contrary to the Award itself, the ambiguity of the Performance Orders allows for this type of opportunistic readings. Claimants want to avoid litigating the environmental effects of TexPet operations in the Oriente region, even with the restricting opinions that this Tribunal has included in this award as to a potential maximum amount of remediation in potential further proceedings between Claimants and the Lago Agrio Plaintiffs.

- iii. Are Claimants demanding that Ecuador takes steps to *“nullify”* or *“remove the enforceability”* of the first instance Judgment and the Lago

⁵¹ Decision on Track IB Issues, 12 March 2015, Operative Part ¶ 186.

⁵² Second Partial Award on Track II ¶ 10.7

⁵³ Second Partial Award on Track II ¶ 10.12

⁵⁴ Second Partial Award on Track II ¶ 8.73.

Agrio Litigation until the point where the fraudulent conduct of the Lago Agrio Plaintiffs and/or the Judges in the case began?

- iv. Are Claimants asking that Ecuador take steps to “nullify” the Lago Agrio Litigation until the moment when, according to the Tribunal, the denial of justice started? The Tribunal considered that “*the Claimants’ case on “ghostwriting” satisfied the legal test for denial of justice under the Fair and Equitable Treatment standard in Article II(3)(a) of the Treaty since the Lago Agrio Judgment became enforceable on 01 March 2012 as result of the Appellate Court’s judgment and order.*”⁵⁵

As reflected by these examples of potential interpretations⁵⁶, the Performance Orders or the Track II Award are not clear enough to permit Ecuador to take specific courses of action “*to remove the status of enforceability from the Lago Agrio Judgment*”, “*to wipe out all the consequences of all the Respondent’s internationally wrongful acts*”, or as Claimants demand “*to nullify the Lago Agrio Judgment in its entirety under Ecuadorian Law*”.

The *Travaux préparatoires* for the UNCITRAL Arbitration Rules of 1976 (the “**UNCITRAL Rules**”) are informative as to the purpose of Article 35 interpretation procedure, which is “*the clarification of “the purport of the award and the resultant obligations and rights of the parties.”*”⁵⁷ Also, specifically applicable to this instance, some representatives observed that “*interpretation [is] useful in resolving confusion and ambiguity in the wording of the award arising in cases where the award was not rendered in the native language of the parties.*”⁵⁸

d) The Orders as to the Merits (paragraph 10.13) exceed the Tribunal’s mandate.

The Second Partial Award on Track II ordered Ecuador to carry out several orders “*to the satisfaction of the Tribunal*”. The effect of this sentence is that the Arbitral Tribunal is reserving itself the right to monitor Ecuador's compliance with the award. The Claimants understand that this is “*perfectly proper*” and that the Arbitral Tribunal can monitor such compliance as long as it retains jurisdiction over Track III of the controversy.⁵⁹

⁵⁵ Second Partial Award on Track II ¶ 8.59.

⁵⁶ Ecuador’s examples are given only for the sake of the argument.

⁵⁷ Summary Record of the 151st Meeting of the UNCITRAL, 8th Session, UN Doc A/CN.9/SR.167, at 205 (1975).

⁵⁸ Summary Record of the 151st Meeting of the UNCITRAL, 8th Session, UN Doc A/CN.9/SR.167, at 206 (1975) (emphasis added).

⁵⁹ Page 7 of Claimants' letter dated 13 October 2018.

The question is whether the Arbitral Tribunal has the power to monitor a party's behavior after it has rendered its award on the relevant issue in dispute. The Arbitral Tribunal must answer two questions: Can the Arbitral Tribunal leave open for further discussion the measures that should be taken by Ecuador in order to comply with the award? If the answer is in the negative, should it instead give precise and clear orders that remain shielded against further discussion?

Ecuador advances that the Arbitral Tribunal cannot monitor Ecuador's compliance with the award. Ecuador is of the view that (i) in light of the finality of the award doctrine and (ii) the *functus officio* principle, the Arbitral Tribunal has ceased to enjoy jurisdiction over Track II of the dispute. Therefore, its award must contain precise orders rather than simply extending its own jurisdiction beyond what was agreed between the parties.

The role of an Arbitral Tribunal is to adjudicate the dispute. After the Arbitral Tribunal has delivered its judgment, it ceases to have jurisdiction over the dispute (or, in the case at hand, that part of the dispute). Renowned scholars put it this way:

*"(...) there is no particular reason why an arbitral tribunal (or indeed an arbitral institution) should know whether or not an award has been carried out. Unlike a national court, an arbitral tribunal has no role to play in the enforcement of its decision. Once the award has been rendered, the arbitral tribunal usually has nothing more to do with the dispute, unless it is required to make an additional award, or to correct or interpret its award. When an arbitral tribunal has made a final award, its work is usually done and the tribunal is 'functus officio'."*⁶⁰ (footnotes omitted).

In other words: an arbitral tribunal ceases to exist with regard to a dispute when it finally decides over that dispute. This doctrine of *functus officio* must be put in context with the doctrine of the finality of the awards. An arbitral tribunal fulfills a mandate of the parties by issuing an award (subject to further correction or interpretation of unclear terms) and when it has done so, there is nothing more it can do with regards to the dispute. Professor WAINCYMER explained it very clearly in his seminal work:

"The logic behind the concept of functus officio is that if parties consent to a tribunal having a mandate to do certain things, once they are completed the jurisdictional authority no longer exists. The notion that a

⁶⁰ Nigel Blackaby, Constantine Partasides, et al., *Redfern and Hunter on International Arbitration*, 6th ed., KLUWER, Oxford University Press, ¶ 11.02 (2015).

*tribunal is functus officio has a strong relationship to other concepts clearly applicable, namely that an award gives rise to res judicata effects between the parties and that awards are binding. The notion of functus officio in common law is simply to the effect that an arbitrator may not revisit the merits of an award once it has been issued. Because of this, the concept must be looked at alongside the doctrine of finality. The functus officio concept would also mean that even where partial awards are rendered, that is the final word of the tribunal on that matter and the tribunal cannot change its view even if the balance of the proceedings are ensuing. As noted previously in relation to *Gulf Petro Trading Co v Nigerian National Petroleum Corp*, later stages can still impact on earlier ones."*⁶¹

The idea that an arbitral tribunal becomes *functus officio* after it has rendered its decision over a dispute is not exclusive to international commercial arbitration. It is also applicable to investment arbitration tribunals, as shown by the tribunal of *Gold Reserve Inc. v the Bolivarian Republic of Venezuela*:

*"There are various policy reasons which underlie the functus officio principle, including the objective of achieving finality in the resolution of disputes and the avoidance of continuous debate about the correctness, completeness and meaning of the award with resultant delay, uncertainty and cost. Specific exceptions to the principle are usually made in the governing procedural law or in institutional arbitration rules which allow arbitrators to correct errors, clarify ambiguities or complete an award by deciding any questions that it has omitted to decide. This is the case of Articles 55, 56 and 57 of the ICSID Arbitration (Additional Facility) Rules."*⁶²

To overcome this doctrine, it is not enough to say that the Arbitral Tribunal continues to have jurisdiction with regard to Track III. Undoubtedly, the dispute concerning the amount of damages that might be awarded to Claimants remains to be adjudicated. However, this is not the case for the issues under the umbrella of Track II.

The purpose of the Second Partial Award on Track II is to become final and binding upon Claimants and Ecuador. The decision contains, for instance, the view of the Arbitral Tribunal concerning issues such as the liability of Ecuador regarding the protections for denial of justice under the BIT signed with the US. Claimants themselves view the Second Partial Award on Track II as final and

⁶¹ Jeffrey Waincymer, *Procedure and Evidence in International Arbitration*, KLUWER, p. 1347 (2012) (emphasis added).

⁶² *Gold Reserve Inc. v the Bolivarian Republic of Venezuela*, ICSID Case no. ARB (AF)/09/1, Award issued on 15 December 2014, ¶ 36.

binding, as revealed by their persistent demands to Ecuador to start implementing what they see as the final word by the Arbitral Tribunal on the matter.

This means that it is undisputed between the parties that the Second Partial Award on Track II is the final and binding decision of the Arbitral Tribunal on the issues adjudicated there. This means that, subject to the clarifications or corrections of clerical mistakes that the Arbitral Tribunal may make, the Arbitral Tribunal has ceased to have jurisdiction over Track II of the dispute.

It is also undisputed that a partial award rendered under the UNCITRAL Rules can be final and binding upon the parties. Article 32(1) allows for the issuance of partial awards and Article 32(2) of the UNCITRAL Rules reads as follows (referring to all types of awards):

"The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay."

It could be argued that the finality of the award is only predicated from the final award rendered by an arbitral tribunal. The drafters of the UNCITRAL Rules did not discuss this topic. However, it seems that when they were discussing the draft Article 27 (today's Article 32) they agreed that an award was final and binding. They did not differentiate between partial and final awards. Mr Jernard, from Belgium, pointed out that "[I]t went without saying that an award was binding".⁶³

Therefore, we must return to the two questions the Arbitral Tribunal should answer: first, it is clear that the Arbitral Tribunal cannot leave open the way in which Ecuador must comply with the award. Second, it is also clear that, as a consequence, the Arbitral Tribunal must give precise orders to Ecuador.

If the Arbitral Tribunal does not correct its mistake and clarifies the Orders as to the Merits in order to give precise and clear orders, it may jeopardize the enforcement of its own award.

Under Dutch Law, as in most jurisdictions, one of the grounds for setting aside an Award is if the arbitral tribunal has not complied with its mandate.⁶⁴

⁶³ Record of the UNCITRAL's 17th Meeting of the Ninth Session, held on 26 April 1976. A/CN.9/9/C.2/SR.17, ¶ 12.

⁶⁴ Art. 1065(1)(c) of the Dutch Code of Civil Procedure of 1986; Art. 1065(1)(c) of the Dutch Code of Civil Procedure of 2015. Similarly, the Dutch Code of Civil Procedure provides post-Award remedies for circumstances when the arbitral tribunal has awarded in excess of what was claimed. Art. 1065(5) Dutch Code of Civil Procedure of 1986 and 2015.

As stated in Ecuador's request for interpretation and clarification, the Orders as to the Merits in paragraph 10.13 of the Award impose an excessively subjective standard that could lead to determinations based on an excessive degree of discretion. Additionally, the very concept that Ecuador must comply with the partial award to the "satisfaction" of the Tribunal presumes that the Tribunal will have continuing jurisdiction on the matter, even after a final award.

As has been discussed above, the Arbitral Tribunal does not retain jurisdiction over Track II of the dispute. And after it renders its award on Track III of the controversy, the Arbitral Tribunal will simply become *functus officio* with regards to the whole dispute. It is inconceivable that the Arbitral Tribunal will be able to monitor Ecuador's efforts to comply with the award after it has become final and binding and for an indefinite period.

For all the reasons mentioned above, the Operative Part of the Second Partial Award, and particularly the Orders as to the Merits should be clear on its face.

Respectfully,



Íñigo Salvador Crespo
Procurador General del Estado

KING & SPALDING

King & Spalding LLP
1100 Louisiana, Suite 4000
Houston, TX 77002-5213
Tel: +1 713 751 3200
Fax: +1 713 751 3290
www.kslaw.com

Doak Bishop
Partner
Direct tel: +1 713 751 3205
Email: dbishop@kslaw.com

September 7, 2018

VIA E-MAIL

Dr. Iñigo Salvador Crespo
Procurador General del Estado
Dra. Claudia Salgado Levy
Directora Nacional
Procuraduría General del Estado
República del Ecuador
Avenida Amazonas N39-123 y Arízaga
Edificio Amazonas Plaza, 5to piso
Quito, Ecuador

Via email: inigo.salvador@pge.gob.ec

Via email: claudia.salgado@pge.gob.ec

Re: PCA Case No. 2009-23; *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador*

Dear Sir:

On behalf of Chevron Corporation (“Chevron”) and Texaco Petroleum Company (“TexPet”), I write with respect to the Tribunal’s Second Partial Award on Track II, dated 30 August 2018 (“Award”).

Chevron and TexPet demand that the Republic of Ecuador (“Ecuador”) comply fully and immediately with the terms of the Award, including immediately notifying all proper authorities in Canada and Argentina, including their Foreign Ministries, their Attorneys General, and all relevant courts in those countries, of the Award and the Tribunal’s declarations and orders regarding Ecuador’s internationally wrongful acts comprising a denial of justice under both customary international law and the fair and equitable treatment provision of the US-Ecuador Bilateral Investment Treaty. The relevant courts who should be notified immediately include the Argentine Court of Appeals, Camara Civil, Sala 1, Poder Judicial de la Nacion (Buenos Aires, Argentina), and Procurador General de la Nacion, Dr. Eduardo E. Casal. In Canada, Ecuador should immediately notify the Supreme Court of Canada in Ottawa, Canada, and the Attorney

September 7, 2018

Page 2

General of Canada. Such notification should specifically reference and quote Sections 9.10 and 10.10 of the Award, among others.

In addition, Chevron and TexPet demand that Ecuador comply with the Award by:

- immediately taking all steps necessary to remove the status of enforceability from the Lago Agrio Judgment;
- immediately enjoining or otherwise precluding the Lago Agrio Plaintiffs (“LAPs”), their representatives and attorneys, any Trusts, and any funders from attempting to enforce the Lago Agrio Judgment;
- abstain from receiving any proceeds from enforcement of the Lago Agrio Judgment and immediately return any proceeds already received;
- comply with Ecuador’s obligation to Chevron and TexPet as Releasees under the 1995 Settlement Agreement; and
- wipe out all the consequences of the Lago Agrio Judgment.

Claimants also request that, based on the Tribunal’s findings and as a matter of the integrity of the Ecuadorian judicial system, Ecuador take steps to nullify the Lago Agrio Judgment in its entirety under Ecuadorian law.

Chevron and TexPet note that there is urgency in Ecuador notifying the courts of Argentina and Canada of the Tribunal’s Award because of impending decisions and ongoing costs.

Respectfully,



R. Doak Bishop

cc: Eric Bloom, via email: ebloom@winston.com
Eduardo Silva Romero, via email: eduardo.silvaromero@dechert.com

PROCURADURÍA GENERAL DEL ESTADO
ECUADOR



01095

Quito DM, **17 OCT 2018**

Señor licenciado
Lenin Moreno Garcés

PRESIDENTE CONSTITUCIONAL DE LA REPÚBLICA DEL ECUADOR

En su despacho.-

Señor Presidente:

El día 30 de agosto de 2018, el tribunal arbitral que conoce el caso planteado por Chevron Corporation y Texaco Petroleum Company en contra del Ecuador, caso CPA No. 2009-23 emitió un laudo parcial de responsabilidad.

A través de dicho laudo, el tribunal admitió la demanda planteada por las compañías, declarando en lo principal que: i) el Ecuador violó el Contrato para la Ejecución de Trabajos de Reparación Medioambiental y Liberación de Obligaciones, Responsabilidades y Demandas celebrado el 4 de mayo de 1995 entre el Estado ecuatoriano, Petroecuador, Texaco Petroleum Company y Texpet; y, ii) que el Ecuador violó el Tratado Bilateral de Promoción y Protección de Inversiones celebrado con los Estados Unidos de América, respecto los estándares de trato justo y equitativo, la cláusula paraguas de dicho Tratado, además de haber denegado justicia a Chevron Corporation dentro del juicio entablado por María Aguinda y otros en su contra, caso No. 2003-002, ante la Presidencia de la Corte Provincial de Sucumbios.

Dada la importancia para el país del laudo arbitral remito para su conocimiento un ejemplar del mismo.

Cabe finalmente señalar que, como efecto del laudo emitido, se ha abierto una tercera fase dentro del procedimiento arbitral en la que se discutirá y cuantificará el monto de indemnización que el Ecuador, por mandato del laudo arbitral, deberá cancelar a las compañías demandantes.

Atentamente,

Dr. Ínigo Salvador Crespo
PROCURADOR GENERAL DEL ESTADO

Adj. 1 CD.

Aprobado por: Dra. Claudia Salgado
Revisado por: Dra. Christel Gaibor
Realizado por: Dr. Felipe Aguilar

Official Letter 01095

Quito DM, October 17, 2018

Mr.

Lenin Moreno Garcés

CONSTITUTIONAL PRESIDENT OF THE REPUBLIC OF ECUADOR

In your office.-

Mr. President:

On August 30, 2018, the arbitral tribunal conducting the case initiated by Chevron Corporation and Texaco Petroleum Company against the Republic of Ecuador, PCA Case No.2009-23, issued a partial award on liability.

Through such award, the Tribunal has admitted the claim submitted by the above-mentioned companies, mainly declaring that: i) Ecuador breached the “Contract for Implementing of Environmental, Remedial Work and Release from Obligations, Liability and Claims”, executed on May 4, 1995 between the Ecuadorian State, Petroecuador, Texaco Petroleum Company and TexPet; and, ii) Ecuador breached the Bilateral Treaty for the Promotion and Protection of Investments between the Republic of Ecuador and the United States of America in regards to the fair and equitable treatment standard, the Treaty’s umbrella clause, in addition to having committed a denial of justice to Chevron Corporation in the litigation initiated against it by Maria Aguinda and others, case No. 2003-002, before the Presidency of the Provincial Court of Sucumbios.

Given the relevance of this Award to the country, I submit a copy of the award for your consideration.

Finally, it should be noted that, as a consequence of the award, a third track of the arbitral procedure has been opened, in which the amount of compensation will be discussed and determined, compensation that shall be paid by Ecuador to the claimant companies, as ordered by the award.

Sincerely,

[S I G N A T U R E]

Dr. Ínigo Salvador Crespo

ATTORNEY GENERAL OF THE STATE

Attached: 1CD.

PROCURADURÍA GENERAL DEL ESTADO
ECUADOR



Oficio No. 01094

Quito DM, **17 OCT 2018**

Señor doctor
Paúl Perez Reina
FISCAL GENERAL DEL ESTADO (E)
En su despacho.-

Señor Fiscal General:

El día 30 de agosto de 2018, el tribunal arbitral que conoce el caso planteado por Chevron Corporation y Texaco Petroleum Company en contra del Ecuador, caso CPA No. 2009-23 emitió un laudo parcial de responsabilidad.

A través de dicho laudo, el tribunal admitió la demanda planteada por las compañías, declarando en lo principal que: i) el Ecuador violó el Contrato para la Ejecución de Trabajos de Reparación Medioambiental y Liberación de Obligaciones, Responsabilidades y Demandas celebrado el 4 de mayo de 1995 entre el Estado ecuatoriano, Petroecuador, Texaco Petroleum Company y Texpet; y, ii) que el Ecuador violó el Tratado Bilateral de Promoción y Protección de Inversiones celebrado con los Estados Unidos de América, respecto los estándares de trato justo y equitativo, la cláusula paraguas de dicho Tratado, además de haber denegado justicia a Chevron Corporation dentro del juicio entablado por María Aguinda y otros en su contra, caso No. 2003-002, ante la Presidencia de la Corte Provincial de Sucumbios.



Dada la importancia para el país del laudo arbitral remito para su conocimiento un ejemplar del mismo.

También remito el mencionado laudo en consideración de que la decisión arbitral narra, en varios pasajes, actos que han sido recogidos por la prensa nacional e internacional y que podrían constituir la *notitia criminis* de una investigación penal.

Atentamente,


Dr. Ínigo Salvador Crespo
PROCURADOR GENERAL DEL ESTADO

Adj. 1 CD.

Aprobado por: Dra. Claudia Salgado 
Revisado por: Dra. Christel Gaibor
Realizado por: Dr. Felipe Aguilar 

Official Letter No. 01094

Quito DM, October 17, 2018

Mr.
Paúl Pérez Reina
PROSECUTOR GENERAL OF THE STATE
In your office.-

Mr. Prosecutor General:

On August 30, 2018, the arbitral tribunal conducting the case initiated by Chevron Corporation and Texaco Petroleum Company against the Republic of Ecuador, PCA Case No. 2009-23, issued a partial award on liability.

Through such award, the Tribunal has admitted the claim submitted by the above-mentioned companies, mainly declaring that: i) Ecuador breached the “Contract for Implementing of Environmental, Remedial Work and Release from Obligations, Liability and Claims”, executed on May 4, 1995 between the Ecuadorian State, Petroecuador, Texaco Petroleum Company and TexPet; and, ii) Ecuador breached the Bilateral Treaty for the Promotion and Protection of Investments between the Republic of Ecuador and the United States of America in regards to the fair and equitable treatment standard, the Treaty’s umbrella clause, in addition to having committed a denial of justice to Chevron Corporation in the litigation initiated against it by Maria Aguinda and others, case No. 2003-002, before the Presidency of the Provincial Court of Sucumbíos.

Given the relevance of this Award to the country, I submit for your consideration a copy of the award.

I also submit the mentioned Award, considering that this decision describes, in various sections, acts which have been reproduced by national and international media, and which could constitute the *notitia criminis* for a criminal investigation.

Sincerely,

[S I G N A T U R E]

Dr. Íñigo Salvador Crespo
ATTORNEY GENERAL OF THE STATE

Attached: 1CD.