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27 April 2018(*)

Ms. Laura Bergamini
Secretary of the *ad hoc* Committee

Ref.: Victor Pey Casado and President Allende Foundation v. Republic of Chile (Case No. ARB-98-2. Resubmission- Proceedings for the annulment of the Award dated 13-09-2016)

Dear Ms. Secretary of the *ad hoc* Committee,

The Claimants respectfully request that the *ad hoc* Committee, in the exercise of its inherent powers, recognises and sanctions the behaviour of the Respondent on 12 and 15 February 2018 and during the oral hearing the following day on 16 February when it knowingly submitted inaccurate facts in support of a request for sanctions and detrimental restrictions upon the Claimants.

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(*) Courtesy translation from the original in French

I. Legal basis for the present request : ICSID Convention, API Spain-Chile and general principles of law

1. Articles 41(1), 42(1), 44 *in fine* and 46 of the ICSID Convention, ICSID Rules 19 and 53 and Article 10(4) of the API Spain-Chile¹, confer inherent powers upon the *ad hoc* Committee to ensure the respect of the general legal principles of good faith and equality between the Parties, as well as the minimum standard that proceedings comply with international legal principles in relation to due process, the right of defence, and the freedom of expression of all Parties.

2. In the case *Fraport Ag Frankfurt Airport v. Philippines*, the *ad hoc* Committee confirmed

"36. The ICSID Convention creates a self-contained system for the arbitration of investment disputes, which is not subject to national law. Rather, the ICSID Convention and Arbitration Rules provide their own lex arbitri, subject to international law. The Convention and the Arbitration Rules contain no specific rules as to the disqualification of counsel.¹⁵ Nevertheless, Article 44 of the ICSID Convention (applicable mutatis mutandis to the procedure before the Committee pursuant to Article 52(4)) provides, in relevant part (...).²

3. In the case *Hrvatska v. Slovenia*, the Tribunal confirmed that an ICSID Tribunal has the "*inherent power to take measures to preserve the integrity of its proceedings*"³ on the basis of Article 44 of the Convention, which authorises the Tribunal - as well as the *ad hoc* Committee - to decide "*any question of procedure*" not provided for by the Convention. The Tribunal also observed that it is an "*inherent power of an international court to deal with any issues necessary for the conduct of matters fully within its jurisdiction*", and that this power "*exists independently of any statutory reference*."⁴

4. The Tribunal in *Libananco Holdings Co. Limited v. Turkey* confirmed that:

[P]arties have an obligation to arbitrate fairly and in good faith and... an arbitral tribunal has the inherent jurisdiction to ensure that this obligation is complied with...⁵

¹ **Exhibit C3**, Article 10(4): "*The arbitration body shall take its decision on the basis of the provisions of this Agreement, of the law of the Contracting Party that is a party to the dispute, including the rules relative to conflicts of laws, and of the terms of any specific agreements concluded in relation to the investment, as well as of the principles of international law on the subject.*"

² **Exhibit C139**, *Fraport Ag Frankfurt Airport v. Philippines*, Decision on Application for Disqualification of Counsel, 18 September 2008, §37, citations omitted, accessible at <http://bit.ly/2fAeybd>

³ **Exhibit C157**, *Hrvatska Elektroprivreda DD v The Republic of Slovenia*, ICSID Case No ARB/05/24, Order Concerning the Participation of a Counsel (6 May 2008), §30 (David A.R. Williams QC, Charles N. Brower, Jan Paulsson), §53

⁴ *Ibid.* §33

⁵ **Exhibit CL246**, *Libananco Holdings Co. Limited v. Turkey*, ICSID Case No ARB/06/8, p. 78, Decision on Preliminary Issues, June 23, 2008, accessible at <http://bit.ly/2HxLzyj>

5. During the hearing on 16 February 2018, the present *ad hoc* Committee confirmed:

*we invite, seriously, the Parties—both Parties, whenever they feel somehow mistreated or misrepresented, address and come to the Committee, and we will—we have the power, and we refer rightly to Article 44. We will use our power, the little power that we have, to be repressive. Not preventive, but repressive in that point. And that is also, really, seriously, to say we are concerned, and we understand your concern, both.*⁶

6. These decisions also find support in doctrine. Prof. Abba Kolo maintains⁷:

Although in discharging its judicial functions an arbitral tribunal is to be guided by its constitutive instruments, in the case of a lacuna in the instruments the tribunal can rely on its inherent powers to fill the gap.⁶⁵ As Boyle and Chinkin have noted, the judicial function of an international court or tribunal is not to abdicate its responsibility for determining a dispute through lack of any provision in its constitutive instruments explicitly dealing with the issue. Instead, 'the judicial function of [an] international court or tribunal must necessarily include "developing and applying international law to hitherto untested situations"'.⁶⁶

Susman and Every consider a guerrilla tactic as:

the frustration of hearings by counsel taking excessive time, raising objections to put off opposing counsel, employing 'theatrical' trickery, such as empty boxes of evidence or the use of blank paper to imply the existence of a crucial, new document¹⁰

One of the most highly respected specialists in ethics in international arbitration, Professor Catherine Rogers, confirmed that:

⁶ Hearing of 16 February 2018, transcript, pages 104-105, 12:11:03

⁷ Exhibit **CL247**, Kolo (A.): *Witness Intimidation, Tampering and Other Related Abuses of Process in Investment Arbitration: Possible Remedies Available to the Arbitral Tribunal*, *Arbitration International*, Vol. 26, No. 1, 2010, page 59, and page 29: *It is arguable (but not established) that tribunals have also an inherent 'contempt of tribunal' power to levy fines for misconduct based on the analogy with common law courts*

⁸ [65] See *Prosecutor v. Kanya*, ICTY Appeals Chamber Decision of 3 June 1999 (Separate Opinion, Shahabuddeen) ('a judicial body, whether civil or criminal has the inherent competence ... to regulate its own procedure in the event of silence in the written rules, so as to assure the exercise of such jurisdiction as it has, and to fulfil itself, properly and effectively, as a court of law'); E Gaeta, 'Inherent Powers of International Courts and Tribunals' in L.C. Vohrah *et al.* (eds.), *Man's Inhumanity to Man: Essays on International law in Honour of Antonio Cassese* (Kluwer, 2003), p. 353 at pp. 366—367 (noting that 'the doctrine of inherent powers ... constitutes an appropriate legal construct for enabling international judicial bodies to fill the lacunae of their constitutive instruments'); Ch. Brown, *A Common Law of International Adjudication* (OUP, 2007), p. 63 (noting that 'even in the absence of express authority, all international courts have the power to make rules of procedure and "procedural" orders as a necessary incident of their traditional functions').

⁹ [66] A. Boyle and C. Chinkin, *The Making of International Law* (OUP, 2007), pp. 289-290 (citing R. Higgins, Aspects of the Case Concerning the Barcelona Traction Light and Power Co. Ltd' in (1971) 11 *Virg. JIL* 327 at p. 341; P. Weil, 'The Court Cannot Conclude Definitively ...': Non-Liquet Revisited' in (1998) 36 *Cohan. J Tran'l L* 109 at p. 115 (noting that 'non-liquet frustrates the will of the parties to have their disputes settled judicially, rather than by some other means in the system. In international adjudication, avoidance of non-liquet is an aspect of jurisdiction').

¹⁰ Exhibit **CL248**, Edna Sussman-Solomon Ebere, *All's Fair in Love and War- Or Is It? Reflections on Ethical Standards for Counsel in International Arbitration*, 22 *Am. Rev. Intl. Arb.* 611, 617 (2012)

"the power to resolve important international and transnational legal be accompanied by a power to control and regulate the attorneys who participate in those proceedings"¹¹,

or Mr. Gary Born:

The most fundamental objective and effect of an international arbitration agreement is to obligate the parties to participate cooperatively and in good faith in the resolution of their disputes by arbitration pursuant to that agreement... Simply put, an agreement to arbitrate necessarily entails a commitment to cooperate in good faith in the arbitral process, with both the arbitral tribunal and other parties to the arbitration, in resolving the parties' disputes in a fair, objective and efficient manner. (...)

The duty of cooperation may well also include complying (and causing a party's counsel to comply) with applicable ethical obligations governing the conduct of counsel in the arbitral proceedings.¹²

7. The *International Principles on Conduct of the Legal Profession* approved by the IBA in 2011 confirm the principle according to which:

2.1 General principle. *A lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the lawyer's clients, the court, colleagues and all those with whom the lawyer comes into professional contact.*

The official commentary to this principle is as follows:

A lawyer shall not knowingly make a false statement of fact or law in the course of representing a client or fail to correct a false statement of material fact or law previously made by the lawyer. Lawyers have an obligation to be professional with (...) other parties and counsel, the courts (...). This obligation includes (...) candor (...) and cooperation, all of which are essential to the fair administration of justice and conflict resolution.¹³

This principle has been violated by Chile in its written communications of 12 and 15 February 2018 and during the hearing on 16 February.

The IBA guidelines on party representation and on conduct for the legal profession

8. Procedural Order n° 1 accepts "*either party's right to advance substantive or procedural arguments based on any norms that it wishes to argue are relevant*".¹⁴

¹¹ **Exhibit CL249**, Rogers (Catherine A.), *Lawyers Without Borders*, 30 U. Pa. J. Int'l L. 1035, 1085 (2009), page 32

¹² **Exhibit CL250**, Gary B. Born, *International Commercial Arbitration* (2014), Ch. VIII, Obligation to Arbitrate in Good Faith, §8.02 and page 1262

¹³ Accessible at <http://bit.ly/2HNd5I3>

¹⁴ PO1 of 7 February 2018, paragraph 1.2, confirms "*either party's right to advance substantive or procedural arguments based on any norms that it wishes to argue are relevant, including, but not limited to, the IBA Rules on the Taking of Evidence in International Arbitration, the IBA Guidelines on Conflicts of Interest in International Arbitration, the IBA*

The IBA guidelines on party representation prohibit misrepresentation of facts or evidence and the concealment of documents:

9. A Party Representative should not make any knowingly false submissions of fact to the Arbitral Tribunal.

The commentary for Rule 2(1) of the IBA Principles on Conduct for the Legal Profession¹⁵ confirms:

A lawyer shall not knowingly make a false statement of fact or law in the course of representing a client or fail to correct a false statement of material fact or law previously made by the lawyer,

and Rule 5(1):

A lawyer shall treat client interests as paramount, subject always to there being no conflict with the lawyer's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards.

In this case, it is difficult to imagine that the Republic of Chile did not know, on 12¹⁶, 15¹⁷ and 16 February 2018 - more than five months after the procedure before the 28th Civil Chamber of Santiago was brought to the attention of the Chilean government¹⁸, four months after the introduction of the Application for annulment of the Arbitral Award¹⁹ - the decisions of the Santiago Tribunal which refute that the injunction of 24 July 2017 was *vacated* in October 2017 and that, consequently, the State was under an obligation to produce the requested documents in relation to the links between the Respondent and the members of Essex Court Chambers before this court of law on 5 December 2017.

These decisions of the Chilean jurisdiction have the quality of evidence, and regardless of their effect in the present proceedings they have led to a new demonstration of systematic procedural behaviour by the Respondent and its representatives in the present arbitration since 1997. Whilst the Claimants' communication of 14 February 2018²⁰ offered the representatives of the State the opportunity to rectify their false assertion of 12 February,

Rules of Ethics for International Arbitrators, and the IBA Guidelines on Party Representation in International Arbitration."

¹⁵ The *Principles on Conduct for the Legal Profession* approved by the IBA on 28 May 2011 are accessible at <https://bit.ly/2wvPNos>

¹⁶ See the communication from the Republic of Chile on 12 February 2018, in particular §13

¹⁷ See the communication from the Republic of Chile on 15 February 2018

¹⁸ See **exhibits C181, C182, C191, C243** the notification process by the 28th Civil Court to the Ministry of AA.EE. in August 2017 of the request by the President Allende Foundation on 29 June 2018 for preliminary measures (**exhibit C184**), the Tribunal's injunction of 24 July 2008 notification to the State's Defence Council on 29 November 2008 (**exhibit C244**), its appearance on 5 and 12 January 2018 refusing to produce the documents (**exhibits C220 and C221**), and the request by the Claimant Foundation to compel the Ministry of AA.EE. (**exhibits C110 and C245**)

¹⁹ See §§179, 180, 18 of the Application for annulment of 10 October 2017

²⁰ See the affidavit of Ms. Victor Araya of 14 February 2018 and the minutes from the hearing on 5 December 2017 before the Santiago judge (**exhibit C208**)

- a) they reiterated it in their email of 15 February, qualifying the communication of 14 February as being *outrageous and defamatory accusations*²¹,
- b) as well as in the presence of the *ad hoc* Committee members during the hearing of 16 February, as is demonstrated below,
- c) and also omitted any rectification after 20 February following the Claimants' production of legally established evidence from 3 and 29 November 2017²² demonstrating that the injunction had not been *vacated* since October 1997.

Yet, whilst Principle n° 10 of the IBA guidelines on party representation provides that:

10. In the event that a Party Representative learns that he or she previously made a false submission of fact to the Arbitral Tribunal, the Party Representative should, subject to countervailing considerations of confidentiality and privilege, promptly correct such submission,

in this case, confidentiality and privilege are not relevant in this respect, all supporting documents and internal procedural decisions of the court are freely available on the website of the 28th Civil Court of Santiago²³, in particular the decision of 3 November 2017 to notify to the State's Defence Council the injunction of 24 July 2017.²⁴

The official commentary for Principle n° 3 specifies:

A Party Representative, acting within the authority granted to it, acts on behalf of the Party whom he or she represents. It follows therefore that an obligation or duty bearing on a Party Representative is an obligation or duty of the represented Party, who may ultimately bear the consequences of the misconduct of its Representative..."

9. Hence, the consequences of the inaccurate communications of 12, 15 and 16 February 2018 by the representatives of the Respondent are incumbent upon the Defendant State itself.

On 15 and 16 February 2018 or afterwards, neither the Republic of Chile nor its representatives rectified the inaccurate/manipulated facts knowingly produced for categorically pejorative purposes, submitted to support its claims for sanctions and restrictions against the Claimants.

On the contrary, during the hearing, by confirming the facts and adding a second level of distortion, they intensified and multiplied the assertions distorting both the details and the context, in a bid to inverse the roles in the opinion of the *ad hoc* Committee, in a clear attempt to accredit a long history of false accusations to themselves as the

²¹ See the email communication by the Republic of Chile to the *ad hoc* Committee on 15 February confirming: *Chile will refrain -- at least for now -- from responding in writing to Claimants' outrageous and defamatory accusations, and plans in the first instance to respond orally at the hearing tomorrow.*

²² **Exhibits C243 and C244**

²³ See the official website <http://civil.poderjudicial.cl/CIVILPORWEB/>, on the tabs *Rol* ["*Rol* : C-14986 – 2017"] and *Tribunal* ["*Tribunal*: 28° Juzgado civil de Santiago"], for all the exhibits produced and the decisions taken in the treatment of the document production procedure since it started on 29 June 2017 to date.

²⁴ Accessible at <http://bit.ly/2oydqge>, and in **exhibits C243 and C244**

victims, for which they did not produce and for good reason, the slightest element of persuasive evidence.

A summary of the facts is shown below.

II. Factual basis for the present request. Before the *ad hoc* Committee, the Republic of Chile failed to be truthful in relation to facts it knew perfectly well

10. It is on file in the arbitration, with *res judicata*, that the exceptional duration of the present arbitration between 1997 and 2012 is, in particular, due to Chile's systematic use of practices involving some form or another of deception or fraud, with a view to frustrating the arbitration, as found by

- the arbitral Award, *res iudicata*, of 8 May 2008²⁵, in paragraph 5 of the *Dispositif* and in §729:

"(...) force is to note that the duration of the present proceedings, and consequently the costs for all parties and the Centre have been notably increased by the policy adopted by the Defendants, consisting of, over and above the usual and "normal" objections to jurisdiction, multiplying objections and incidents which are incompatible with the uses of international arbitration." [« (...) force est de constater que la durée de la présente procédure, et par conséquent ses coûts pour toutes les parties et pour le Centre, ont été notablement augmentés par la politique adoptée par la défenderesse consistant, au-delà des exceptions usuelles ou « normales » à la compétence, à multiplier objections et incidents parfois incompatibles avec les usages de l'arbitrage international »]

- as confirmed in the *ad hoc* Committee decision of 18 December 2012 (§§353, 354)²⁶ rejecting Chile's objections to this part of the arbitral Award:

"the pertinent paragraphs of the dispositif which deal with costs and which are not annulled by the Decision of the Committee remain in effect. They read as follows::

‘5. Impose upon the Defendant a contribution to the costs and expenses presented by the Claimants, to the value of USD 2,000,000, - (two million);
6. decide that the costs of the procedure will be borne by the parties in the following proportions: $\frac{3}{4}$ of the total amount (equal to USD 3,136,893.34) by the Defendant and $\frac{1}{4}$ of the total amount (equal to 1,045,631.11) by the

²⁵ **Exhibit C2**

²⁶ **Exhibit C20**, *Ad hoc* Committee Decision of 18 December 2012 rejecting Chile's request for annulment of the entirety of the arbitral Award of 8 May 2008. This Decision in no way questioned the principle of compensation, or the calculation of the amount of damages envisaged by the original arbitral Tribunal (see §§266, 267, 286 and 271 of this *ad hoc* Committee Decision.). See also **exhibits C246, C247 and C248**

Claimants; consequently, order the Defendants to pay the sum of USD 1,045,579.35 to the Claimants." "5. met à la charge de la défenderesse une contribution aux frais et dépens exposés par les demanderesses, d'un montant de USD 2.000.000, - (deux millions); 6. décide que les frais de procédure seront supportés par les parties dans la proportion de : ¾ du montant total (soit USD 3.136.893,34) pour la défenderesse et ¼ du montant total (soit 1.045.631,11) pour les demanderesses ; ordonne en conséquence à la défenderesse de payer aux demanderesses la somme de USD 1.045.579,35."

11. Practices of the same nature, "*serious fraud on the judgment by deception*"[escroquerie aggravée au jugement par tromperie]²⁷, following the arbitral Award of 2008, were brought to the attention of the Tribunal for the resubmission of questions which arose between the parties from May 2000²⁸, which it considered was beyond its jurisdiction *ratione temporis*²⁹.

12. A new demonstration of the Respondent's practices took place before the present *ad hoc* Committee itself in 2018:

- on 19 January 2018, when the Republic of Chile formulated inaccurate or manipulated declarations, a sample of which can be seen in **Exhibit C214**,
- on 12 February 2018³⁰, when the Republic of Chile failed to be truthful in relation to the fact that it had not obeyed with the injunction of 24 July 2017 of the 28th Civil Court of Santiago to produce documents relating to payments made to members of Essex Court Chambers - on the ground that this injunction would have been discontinued (*vacated*) in October 2017, which gave rise to the Claimant's formal protest of 15 February 2018³¹;

²⁷ **Exhibit C40**, Rejoinder of 9 January 2015, section 2.3 *The Counter Memorial comes into its own for fraud to the arbitral award* [Le Contre-Mémoire prend tout son sens dans le cadre d'une escroquerie à la Sentence arbitrale]

²⁸ Memorial of 16 June 2013 (**exhibit C83**, §94); Reply of 9 January 2015 (**exhibit C40**, §§236-291) and hearing of 13 April 2016 (**exhibit C43**, pages 30-41)

²⁹ **Exhibit C9**, §216: "*The Tribunal should also interpolate at this point that part of the argument addressed to it by the Claimants in these resubmission proceedings was to the effect that the actions of the Respondent, since the handing down of the First Award, constituted a new denial of justice, (...) . This is an argument that the Tribunal must reject outright (...) the entire argument falls plainly outside the jurisdiction of the present Tribunal, which (...) is limited (...) exclusively to 'the dispute' (...) that had been submitted to arbitration in the first place, the critical date for which was the Claimants' original request for arbitration [November 3, 1997]. Issues arising between the Parties after that date – and still more so issues arising out of post-Award conduct – cannot by any stretch of the imagination fall within the scope of resubmission proceedings. "*

³⁰ Reply by Republic of Chile on 12 February 2018, page 6

³¹ See the formal protest formulated by the Claimants on 14 February 2018 - "*the Claimants formulate their protest for a new instance of serious manipulation of the facts by the Defendant State destined to create confusion or even mislead the ad hoc Committee. The inaccuracy is flagrant and easily proved. (...)*" [« les Demanderesses formulent leur protestation pour une nouvelle manipulation grave des faits de la part de l'État Défendeur destinée à créer de la confusion voire tromper le Comité ad hoc. L'inexactitude est criante et facilement démontrable. »] - and the documents attached: the affidavit of Mr. Victor Araya Anchia of 14 February 2018 (annexed to the communication of the Claimants of the same date) and the French version of the Decision of the 28th Civil Court of Santiago on 18 October 2017 (**exhibits C242 and C242bis**), produced in Spanish by the Republic of Chile - exhibit RA-0035- in which the first paragraph refuses the State's request to annul the injunction of 24 July 2017.

- on 16 February 2018, by formulating its claims during the hearing before the *ad hoc* Committee a) on the basis of a confirmation, reiterating the lack of truth given on 12 February 2018 in relation to the supposed discontinuance of the injunction of 24 July 2017 in the following October, b) by adding inexistent, false or manipulated facts to support this failure, and c) extending everything to a supposed abundance of defamation for which the Claimants were guilty; without the slightest element of evidence.

13. In fact, on 12 February 2018, the Republic of Chile insisted on its claims before the *ad hoc* Committee writing the following:

*"13. Claimants' **sixth** argument appears to be that the Committee's intervention is necessary to give effect to a Chilean court order [of 24 July 2017³²] that (according to Claimants) requires production of the requested documents. However, the court order in question was vacated on procedural grounds more than **two months** before Claimants submitted [on 21 December 2017] their Document Request to the Committee³³ (...) Claimants' discussion of this issue amounts to a misleading red herring."*³⁴ [Underlined in the original]

Independent of the fact that at no point had the Claimants requested *the Committee's intervention necessary to give effect to a Chilean court order*, during the hearing on 16 February 2018 the Republic of Chile continued to make inaccurate claims which distorts the sense and the finality of the decisions taken by the 28th Civil Court of Santiago of which the State became fully aware the moment it became the Defendant party, providing an abundance of written submissions in the aforementioned procedure³⁵.

14. In fact, during the oral hearing, Chile argued that the injunction of 24 July 2017 would have been vacated more than two months before that, on 21 December 2017, the Claimants submitted a Request for the production of documents to the *ad hoc* Committee. That is to say that, according to Chile's arguments before the *ad hoc* Committee, before 21 October 2017 *the court order in question was vacated*. When the Respondent is fully conscious:

³² **Exhibit C110**, Injunction of 24 July 2017 of 28th Civil Court of Santiago

³³ [34] See generally Ex. RA-0035, Ruling of the 28th Civil Court of Santiago, 18 October 2017. To recall, Claimants submitted their Document Request to the Committee on 21 December 2017.

³⁴ Reply by the Republic of Chile of 12 February 2018, page 6, citations omitted

³⁵ See in the **exhibits C191, C242, C208, C220, C221** the appearances of the State's Defence Council before the 28th Civil Court of Santiago, and the entire internal procedure on the Court's official website (FN n° 23 *supra*)

- i. That in its decision of 3 November 2017, the 28th Civil Court of Santiago ordered that the State's Defence Council, representative for the Republic of Chile, be notified of the **injunction of 24 July 2017** to the Ministry of AA.EE. to produce the requested documents in the Spanish Foundation's request of 26 June 2017:

*"The Tribunal, estimating that the request carries a modification of the summons, that it should be considered as modified in the manner specified for all legal intents and purposes, and that it is part of **the decision on 24 July 2017**. Let it be jointly notified"*³⁶
[« Le Tribunal, estimant que la demande comporte une modification de l'assignation, que celle-ci soit tenue pour modifiée de la façon mentionnée à tous effets légaux, et que cela fasse partie de **la décision en date du 24 juillet 2017**. Que ce soit notifié conjointement »] [emphasis added];

- ii. That on 29 November 2017 the State's Defence Council was actually notified of the injunction:

*"In Santiago, on twenty ninth of November two thousand and seventeen, at 11:44 in **1687 Agustinas Road Santiago town**, I personally notified Ms. **Ruth Israel Lopez, Santiago Prosecution lawyer Representative for the State's Defence Council, representative for the State of Chile**, the request and the resulting decision of 3 November 2017, I issued integral copies in their entirety and I reported it in the corresponding register of notifications.- .Yessica Paredes Benavides, Legal Receiver".*³⁷ [Bold characters in original text]

- iii. That on 5 December 2017, in the legally established time period after the notification of the injunction of 24 July 2017, the State's Defence Council appeared before the judge to declare that:

*"the documents ordered by **the decision of 24 July 2017** (...) [are] covered by privilege or the reserve and/or [are] confidential, there is good cause to refuse or excuse ourselves from having to produce them in compliance with articles 273, 277 and 349 of the Civil Procedure Code"*³⁸ [emphasis added];

- iv. That two days later, on 7 December 2017³⁹, the Claimant Foundation filed the legal basis for a request at the Civil Court of Santiago, for the application upon the Ministry of sanctions provided for in Article 276 of the Civil Procedure Code which provides:

*"In case of refusal to carry out the presentation in the terms indicated by the previous article, constraints such as a fine or detention may be imposed in the form stipulated by Article 274 and furthermore, a perquisition of the premises where the requested object is located"*⁴⁰,

³⁶ Exhibit C243

³⁷ Exhibit C244

³⁸ Exhibit C208

³⁹ Exhibit C212

⁴⁰ Art. 276 (266): "Si se rehúsa hacer la exhibición en los términos que indica el artículo precedente, podrá apremiarse al desobediente con multa o arresto en la forma establecida por el artículo 274, y aun decretarse allanamiento del local donde se halle el objeto cuya exhibición se pide."

- v. That on 15 January 2018 the Spanish Foundation reiterated to the Santiago Tribunal⁴¹ its request for the application of sanctions for failure to obey the injunction of 24 July 2017,
- vi. And that, consequently, the aforementioned injunction had not been vacated when the Claimants filed their request to the *ad hoc* Committee on 21 December for the production of documents, nor when the hearing took place before the *ad hoc* Committee on 16 February 2018.

15. Further evidence of the inaccuracy reiterated by the Respondent on 12, 15 and 16 February 2018 is:

- a) The 28th Civil Court of Santiago's decision of 20 April 2018⁴², which confirms that the injunction of 24 July 2017 had never been vacated, and as a result, responds to the request of 5 April 2018 by the President Allende Foundation for a constraint (perquisition) on the Ministry of AA.EE.⁴³;
- b) The appeal formed by the Foundation on 25 April 2018 against this decision.⁴⁴

Sample of inaccurate or manipulated facts introduced by the Republic of Chile before the *ad hoc* Committee in support of its claims to the detriment of the Claimants

<u>Page</u>	<u>Inaccurate statements in relation to legally proven facts</u>
70	<p>During the hearing on 16 February 2016, at 11:06:25, the Respondent affirmed:</p> <p><i>a further manifestation of the phenomenon that we had in the submissions from yesterday, which is the Claimants appear to have no compunction (...) without any regard to whether what they're saying is outrageous or not</i></p> <p>[these <i>outrageous submissions</i> by the Claimants from the day before were the following legally established facts:</p> <p>1) The resolution by the 28th Civil Court of Santiago dated <u>3- 11- 2017 (exhibit C243)</u>, ordering that the State's Defence Council be notified of the injunction of 24-07-2017 (exhibit C110) on the Ministry of AA.EE. to produce the documents requested by the Foundation on 27-06-2017 (exhibit C184);</p> <p>2) The notification of the injunction to the State's Defence Council dated <u>29-11-2017 (exhibit C244)</u>, the execution for which the State appeared before the judge on <u>5-12-2017 (exhibit C208)</u>;</p>

⁴¹ Exhibit C245

⁴² Exhibit C283

⁴³ Exhibit C284

⁴⁴ Exhibit C291

	3) the request for sanctions on <u>7-12-2017</u> (exhibit C212) by the Foundation upon the State for not having produced the documents ordered in the injunction]
83-90	<p>11:25:26: <i>you have outrageous things like their letter from yesterday floating around there. (...) In this regard there's--relevant is Article 44 of the ICSID Convention, (...) this practice that the Claimants have of publishing these letters and so forth that make such grave accusations all the time is, in fact, damaging. (...) the Committee should exercise its discretion to direct the Claimants not to publish their own materials, irrespective of whether, in principle, this authority would or would not exist, and whether a particular Committee and particular circumstances would, in fact, exercise it. (...) the practice of submitting letters, like, and saying things in their written memorials and so forth of the sort they said in their letter yesterday. They say there is fraud. Chile's counsel lied, Chile's official lied, etcetera. (...) We will show you this afternoon that it is they who misrepresented the Chilean proceeding. (...) We have never, ever, ever willfully misrepresented anything in the 16 years certainly that I have been involved in this case. Not a comma in the footnote.</i></p> <p>[These inaccuracies, manipulations and bias by Chile were in preparation of the virtual image on the basis of which it asks the <i>ad hoc</i> committee during the hearing to order the Claimants not to publish their pleas. Yet, what Chile qualifies as <i>misrepresentations</i> are the legal decisions themselves featuring in exhibits C184, C110, C243, C244, C208, C212, C284, C283.]</p>
94	<p>11:39:15: <i>You can't just say slanderous and defamatory things and then call it free speech for the reasons I explained. (...) If you were somehow inclined to enable them to do this, we think that you should hold them to a higher standard of truth, if you will, that they will not be allowed and they will be penalized somehow for saying things that are, in fact, damaging to reputation, like the thing they sent yesterday.</i></p> <p>[The fact that Chile qualifies as <i>defamatory</i>, and for which it requests sanctions, is however judicially established in exhibits C184, C110, C243, C244, C208, C212, C284, C283]</p>
94	<p>11:40:47 <i>I'm sure that their website already has that letter, and it's out there</i></p> <p>[Inaccurate. This letter had not been published on 16 February 2018 and has not been to date.]</p> <p style="text-align: center;">-</p>
97	11:44:59

	<p><i>I think the letter that was submitted yesterday is an example that this can be damaging (...) in the email and the letter they say "mensonge."</i></p> <p>[The inaccurate facts affirmed by the Republic of Chile seem to have convinced the <i>ad hoc</i> Committee, which responds: "<i>I really think that Respondent has made the point which I find serious and we will have to decide whether--what we will do</i>"]</p>
99	<p>11:47:33:</p> <p><i>They [Claimants] were sanctioned with costs in the Revision Proceeding, they were sanctioned with costs in the Annulment Proceeding, they were sanctioned with costs in the Resubmission Proceeding. (...) a lot of what they do is improper and damaging. And that's why they have been subjected to these costs awards (...)</i></p> <p>[Manipulation and conflation of facts: In the arbitral file there is no decision of an arbitral tribunal or an <i>ad hoc</i> committee, which would mention that the Claimants would have communicated inaccurate facts, or committed some form of procedural irregularity, or any sanction to pay costs for these reasons]</p>
100-102	<p>11:48:41 to 11:49:48 :</p> <p><i>if you were to reach the conclusion that we are correct about some of these concerns, that you should consider legal fees this time. That's our submission, Mr. Chairman.</i></p> <p>[These <i>concerns</i> or <i>conclusions</i> rely on inaccurate and/or manipulated facts refuted by legally establish facts in the file, but the virtual effect seems to have struck the <i>ad hoc</i> Committee. When no sanction, not even an observation or a mention exists in the procedure against the Claimants to have made inaccurate expressions on some sort of fact or on a procedural irregularity, Chile brought the <i>ad hoc</i> Committee to say:</p> <p><i>"we considered it of importance, and we consider it of concern, and we understand the concerns that you have voiced. (...) here have also been sanctions, if I see the whole picture, against the Respondent--cross-sanction, in the very early stage. So, <u>both Parties</u> have their history in these Proceedings."</i> [emphasis added]</p> <p>Yet, there has never been the slightest trace, or the slightest outline of an evocation of such a motive, or a <i>cross-sanction</i>, aimed at the procedural behaviour of the Claimants during the twenty years of the present arbitration.</p>

135, 136	<p>12:58:58 : <i>we never said the proceeding was vacated. We said the particular court order was vacated (...) all this accusation is based on the apparent misunderstanding that we were arguing that the whole proceeding was vacated, and that's not the case. It is continuing. We don't deny that.</i></p> <p>01:00:13 : <i>We said the particular court order [du 24-07-2017] was vacated (...), did we misrepresent in any way when we said that the Court order of July 24 was vacated? Just that particular Order?</i></p> <p>[The legal exhibits C243, C244, C110, C208, C212, C284, C283 demonstrate that the Defendant's affirmation constitutes a manifest falsehood, the injunction had not been vacated in October 2017]</p>
139	<p>01:03:41 : <i>the same court is essentially nullifying this July 24 resolution saying we're taking everything back to the status quo ante from the time they filed the request. (...) All we said in our letter was this particular resolution was, in fact, vacated</i></p> <p>[The legal exhibits C243, C244, C110, C208, C212, C284, C283 refute this affirmation of the Defendant State, the injunction had not been vacated in October 2017] _</p>
140	<p>01:05 :11 : <i>the relevant issue here is whether Chile is currently under a court obligation to produce those documents. And the answer to that is, no, it is not.</i></p> <p>[The legal exhibits C243, C244, C110, C208, C284, C283 demonstrate that this affirmation by the Defendant is inaccurate, the injunction of 24 July 2017 having been notified to the State's Defence Council on 29 November 2017 that it had to produce the documents requested during the hearing on the following 5 December]</p>
141	<p>01:06 :27 <i>It is possible that the Court will eventually say we agree with the Claimant's, Chile, you have to produce these documents. But that hasn't happened yet. (...) they are saying that we have misrepresented and that Chile is obligated under its own court decisions to present these documents, and that's just not true</i></p> <p>[The legal exhibits C243, C244, C110, C208, C284 refute the Defendant's affirmation and prove that the injunction had not _ been vacated in October 2017]</p>

142	<p>01:07 :40 : <i>So they say, in essence, the Claimants have a right to these documents under the Chilean court decisions, and that is just not true. It's just not true. So if anybody has misrepresented here, it's them.</i></p> <p>[The legal exhibits C243, C244, C110, C208, C284 demonstrate that this affirmation by the Defendant is inaccurate, the injunction had not been vacated in October 2017]</p>
143	<p>01:08 :53 <i>They cited this document, which happens to have been vacated.</i></p> <p>[The legal authorities C243, C244, C110, C208, C284 demonstrate that this affirmation by the Defendant is inaccurate, the injunction of 24 July 2017 was not <i>vacated</i> either when the Claimants formulated their request of 21 December 2017 or during the hearing on 16 February 2018.]</p>
144, 145	<p>01:11 :38 : <i>his is from [a Claimants' counsel] saying, "I am now dealing--I am now dealing with the situation in an ICSID proceeding where the opposing Party has, I am certain, knowingly presented false information in the proceeding." That's a very damning and damaging statement. He says he's certain that we presented false information. That's just not true; right? It's completely unacceptable and irresponsible.</i></p> <p>[The legal exhibits C243, C244, C110, C208, C284 demonstrate that the affirmation of the Claimant's counsel is legally established as being perfectly accurate, the information produced by the Defendant confirming that the injunction of 24-07-2017 was <i>vacated</i> is deliberately inaccurate]</p>
145, 146	<p>01:12 :51 <i>And then it [Claimants' counsel] says, "Chile defies own court, still refusing to produce documents showing cash flow from its governmental law chambers of two of the three resubmission arbitrators." It defies its own courts. (...) So, how are we defying our own courts? (...) it is just wrong. If anybody has misrepresented anything, it's them; right?</i></p> <p>[The legal exhibits C243, C244, C110, C208, C284 demonstrate that the affirmation of the Claimants' counsel is true, the injunction of 24 July 2017 was not <i>vacated</i> in October 2017, unlike what the Republic of Chile hammered home before the <i>ad hoc</i> Committee, the Defendant State had not deferred to the injunction when it appeared before the Santiago judge on 5 December 2017.]</p>

146, 147	<p>01:14 :06</p> <p><i>This is our first complaint regarding these statements in the public and the accusations that they made in the letter and the email with the word "mensonge."</i></p> <p>[The legal exhibits C243, C244, C110, C208, C284 demonstrate that the public affirmations by Claimants' counsel and those contained in the non-published letter of protest on 15-02-2018, are true and those of the Defendant before the <i>ad hoc</i> Committee are inaccurate]</p>
149	<p>01:17:07</p> <p>Has the continued series of inaccurate affirmations on the part of the Defendant with regard to the injunction of 24 July 2017 convinced the <i>ad hoc</i> Committee? Apparently so, when, diverting the subject of controversy - constituted by the falsity of the affirmations by the Republic of Chile on the so called "vacated" status of the <u>injunction</u> of 24 July 2017 - towards a position of withdrawal referring in general terms to the pursuance of the [internal] procedure, it indicated by way of conclusion:</p> <p><i>"So there is not a vacation of the proceedings",</i></p> <p>the semantic shift practiced by the Defendant State in order to save face having been precisely this: <i>"we never said the proceeding was vacated. We said the particular court order was vacated"</i> (page 136, 12:58:58).</p> <p>Yet the legal exhibits C243, C244, C110, C208, C284 refute not just this <i>"red herring"</i> of substitution pulled out of the hat by the Defendant, but the alleged removal from the register of the injunction of 24 July 2017 <u>clearly affirmed by the Defendant</u>, an affirmation clearly qualified as lies by the Claimants on 14 February 2018, which it was, effectively, and which is far from leading to make amends on the part of the Defendant led to confirmation, amplification and generalisation of an allegation of an abundance of inaccuracies and irregularities of which both were guilty.</p> <p>An allegation lacking the slightest element of support.</p>

III. On the basis of an unethical *modus operandi*, the Defendant State diverted the hearing towards a marginal subject and sought to cause the *ad hoc* Committee to adopt decisions which were unfavourable for the Claimants

16. Making use of such means during the hearing, the Respondent failed in its fundamental obligation to act in good faith.

The Tribunal in the *Methanex* case considered that:

*In the tribunal's view, the Disputing parties each owed in this arbitration a general legal duty to the other and to the Tribunal to conduct themselves in good faith during these arbitral proceedings and to respect the equality of arms between them*⁴⁵,

and in the case *Libananco v. Turkey* that:

*parties have an obligation to arbitrate in good faith' and that 'this principle applies in all arbitration, including investment arbitration, and all parties, including states (even in the exercise of their sovereign powers)*⁴⁶

17. In compliance with Article 61(2) of the Convention and Rule 47(1)(i)(j) of the ICSID Rules, the *ad hoc* Committee has the power to sanction irregular behaviour of the parties in the procedure by imposing costs upon them, as demonstrated by the initial arbitral Award of 8 May 2008 (§§726-730) and others.⁴⁷ It can also draw negative inferences.⁴⁸

IV. The Claimants do not request the *ad hoc* Committee to go back on any of its decisions taken during the hearing on 16 February 2018

18. They are in agreement with the point that the events that took place or could take place at the Santiago Court are not restrictive for the *ad hoc* Committee.

19. Even though the fact that the decisions of the 28th Santiago Court do not determine the jurisdiction of the *ad hoc* Committee, the Claimants express their concern in relation to the fact that the *modus operandi* of the Respondent during the hearing of 16 February 2018 has succeeded, on the basis of a reinforced and exaggerated allegation and knowingly inaccurate facts, on a question which is not dealt with by, and does not interfere with the powers of the Committee,

⁴⁵ **Exhibit CL251**, *Methanex v. United States*, Final Award on Jurisdiction and Merits of 3 August 2005, Part II, ch. I, para 54, accessible at <https://bit.ly/2yJjAKw>

⁴⁶ **Exhibit CL246**, Decision on Preliminary Issues of 23 June 2008, para. 78

⁴⁷ See the references in the **exhibit CL247**, Abba Kolo, *Witness Intimidation, Tampering and Other Related Abuses of Process in Investment Arbitration: Possible Remedies Available to the Arbitral Tribunal*, 26 AI 43, (2010).

⁴⁸ See Kolo, *ibid.*, pages 73-79

- a) **For approximately a quarter of the session,**⁴⁹ to divert the treatment of subjects for which the hearing was called to the detriment of the best and most effective preparation for the rest of the procedure for which the immediate material costs for the Claimants (transport, accommodation, fees, logistics etc.) is quantifiable, but the consequences for what happens next and the final outcome of the procedure is not;
- b) To create a risk for the Claimants, consisting of bringing the *ad hoc* Committee to suspend the session at 11:49⁵⁰ to deliberate on the sanctions against the Claimants requested by the Republic of Chile for having unambiguously characterised that Chile was not truthful when affirming- on 12, 15 and 16 February 2018- that the judicial injunction of 24 July 2017 had been *vacated* in October 2017, and this has an explicitly pejorative ending for the Claimants, characterised as having tried to mislead the *ad hoc* Committee ("*red herring*");
- c) To bring the Committee to deliberate if it had to accept Chile's claims destined impose pecuniary sanctions upon the Claimants and restrictions upon their freedom of expression and publication of their submissions, the only way to ensure transparency of the debates in a case where such pressure is exercised upon them.

V. **Request to the *ad hoc* Committee**

20. The Claimants express their worry on the influence that the success of a *modus operandi* of this category could have on the minds of the *ad hoc* Committee, or could have in the future on its decisions, implemented by the Defendant on 12, 15 and 16 February 2018. This consisted of knowingly communicating, reiterating and pushing to the point of accusation, reversing the roles, an inaccurate information as to the factual grounds.

If this *modus operandi* produced itself during the final hearings, when the Republic of Chile will have the last say, the consequences could be irreparable.

They respectfully request that the *ad hoc* Committee:

- a) Note that the legally established exhibits in the present arbitral file include proof of the fact that when, on 21 December 2017 the Claimants formulated their request for the production of documents, the injunction of 24 July 2017 by the 28th Civil Court of Santiago was not *vacated*, no more than during the State's appearance before the Santiago Judge on 5 December 2017 or during the hearing of 16 February 2018 before the *ad hoc* Committee,

⁴⁹ Chile's aims to convince the Committee that the Santiago Court had decided in October 2017 that the injunction of 24 July 2017 had been vacated occupied *grosso modo*, directly or indirectly, 100 minutes of the seven useful hours of the session (mealtime excluded), namely from 09:41 to 09:44, 11 :06 to 11:10, 11:25 to 12:12, 12:19 to 12:29, 12:48 to 12:51, 12:57 to 01:30, that is to say the equivalent of 24% of the total speaking time, meals and coffee breaks excluded

⁵⁰ See the transcription in English, page 102

- b) It is totally impossible that everything was not completely within the knowledge of the Respondent State,
 - c) Consequently, the Republic of Chile lacked good faith by holding on 12 and 15 February 2018, and during the hearing of 16 February, that the injunction of 24 July 2017 had been *vacated*,
 - d) The Republic of Chile presented facts which were either inaccurate in themselves, or in a misleading way, in support of its aims to sanction the Claimants for having protested on 15 February 2018, in the only way compatible with the accusation, brought against them on 12 February, of having introduced on the 2 February beforehand false facts in order to mislead the *ad hoc* Committee,
 - e) In doing so, the Republic of Chile and their representatives failed to adhere to the IBA Guidelines on party representation –Rules 3 and 9- and on conduct for the legal profession –Rules 2(1) and 5(1).
21. The Claimants respectfully request, in order to preserve the integrity and the fairness of the procedure, and given the nature and the seriousness of the behaviour of the Respondent State on 12, 15 and 16 February 2018, its blatant bad faith, the non-rectification of its behaviour by its representatives, but the complete contrary, its deliberate amplification, that the *ad hoc* Committee exercises its powers and that, in compliance with Rule 26 of the IBA Guidelines on party representation:
- (a) That it draws appropriate conclusions in its reasonable appreciation of the judicial evidence produced, as to the evaluation of the fact that, against this evidence, on 12, 15 and 16 February 2018 Chile presented the reference made by the Claimants in their submissions as deception, and to this end, explicitly pejorative, the injunction of 24 July 2017 of the 28th Civil Court of Santiago as being *vacated* since October 2017;
 - (b) That it draws appropriate negative inferences from the attempts by Chile's representatives, with consumed effrontery, to make the *ad hoc* Committee believe, with no foundation and against all of the evidence, that the Claimants' representatives lacked professional ethics by bluntly questioning the inaccuracy of the communication of 12 February 2018 submitted by the Defendant, and that such supposed failures are abundant and proven, since the start of the arbitration, without any evidence;
 - (c) That it sanctions the behaviour of the Republic of Chile for its communications of 12 and 15 February and at the hearing the following day by introducing and continuously supporting inaccurate facts, infringing upon the honour and the professional integrity of the Claimants, to the point of getting the *ad hoc* Committee to warn that it was ready, after deliberation, to also take measures against them by virtue of Article 44 of the Convention, and to encourage a Claimant's counsel to rectify, at the request

of Chile, an entirely founded declaration produced in a circle of public debate;

(d) Warning to which the Claimants affirm, with a clear conscience, to have never exposed itself today or in the past, exclusive of the double deception in favour of which the Defendant State designated its own qualities before the *ad hoc* Committee on 12, 15 and 16 February, which characterise more than twenty years of the present arbitration (see §10 *supra*) ;

e) That it takes into account these facts in the allocation of costs of the arbitration, by indicating if needed how and to what extent they have led the Committee to a different allocation of these costs;

(d) That it takes all other appropriate measures to preserve the fairness and integrity of the procedure.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'Dr. Garcés', with a long horizontal line extending from the end of the signature.

Dr. Juan E. Garcés, Representative of the President Allende Foundation, Mr Victor Pey Casado and Ms. Coral Pey Grebe

TABLE OF SUPPORTING DOCUMENTS

<u>Nº</u>	<u>I. FACTUAL EXHIBITS</u>	<u>Date</u>	<u>Procedure</u>
<u>C110</u> <u>C110e</u>	Decision of the 28 th Civil Court of Santiago ordering the Ministry of Foreign Affairs to produce the payments made by the Chilean State to members of Essex Court Chambers from 1 January 2005 to date	2017-07-24	Procedure to rectify the Award of 13 September 2016
<u>C181</u>	The Minister of Foreign Affairs of Chile did not allow that the resolution of the 28 th Civil Court of Santiago of 24 July 2017 be notified to him/her in person	2017-08-09	Second annulment procedure
<u>C182</u>	The Minister of Foreign Affairs of Chile did not allow that the resolution of the 28 th Civil Tribunal of Santiago of 24 July 2017 be notified to him/her in person	2017-08-11	Id.
<u>C184</u>	Request for preliminary measures formulated by the President Allende Foundation before the Chilean courts	2017-06-27	Id.
<u>C191</u>	Minutes of the hearing before the 28 th Civil Court of Santiago. The Ministry of Foreign Affairs did not obey the Judge's order to produce the payments made to members of Essex Court Chambers	2017-09-05	Second annulment procedure
<u>C208</u> <u>(Fr)</u> <u>C208</u> <u>(Es)</u>	28 th Civil Court of Santiago.- The Chilean Government did not produce the documents ordered in the injunction of 24-07-2017	2017-12-05	Second annulment procedure
<u>C212</u> <u>(Fr)</u> <u>C212</u> <u>(Es)</u>	Claimants' request from the 28 th Civil Court of Santiago to impose a constraint upon the Ministry of Foreign Affairs and a perquisition of the Ministry	2017-12-07	Id.
<u>C214</u>	Sample of inaccuracies contained in Chile's response of 19-01-2018	2018-02-02	Id.
<u>C220</u> <u>(Es)</u>	The State requests the Judge not to enforce the effects of the injunction upon the Ministry of Foreign Affairs	2018-01-05	Second annulment procedure
<u>C221</u> <u>(Es)</u>	The State requests the Judge not to enforce the effects of the injunction upon the Ministry of Foreign Affairs	2018-01-12	Id.

<u>C242</u> <u>(Fr)</u>	The 28 th Civil Court of Santiago confirms the injunction of 24-07-2017 to produce the documents and annul the notification ordering notification to the State's Defence Council	2017-10-18	Second annulment procedure
<u>C242</u> <u>(Es)</u>	The Request for the production of documents requested by the President Allende Foundation		
<u>C242bis</u> <u>(Fr</u> and <u>Es)</u>	Articles 83 and 84 of the Chilean Civil Procedure Code, ground for the decision of the 28 th Civil Court of 18 October 2017	2017-10-18	Id.
<u>C243</u> <u>(Fr)</u> <u>C243</u> <u>(Es)</u>	The 28 th Civil Court of Santiago ordered the notification of the injunction to the State's Defence Council of 24-07-2017 and Request of the President Allende Foundation for the production of documents	2017-11-03	Id.
<u>C244</u> <u>(Es)</u> <u>C244</u> <u>(Fr)</u>	Notification to the State's Defence Council of the injunction of 24-07-2017 to produce the documents requested by the President Allende Foundation	2017-11-29	Id.
<u>C245</u> <u>(Es)</u>	The PAF reiterated that the Ministry of Foreign Affairs had disobeyed the injunction of 24-07-2017	2018-01-15	Id.
<u>C283f</u> <u>C283e</u>	The President Allende Foundation reiterated its request to the 28 th Civil Court of Santiago to impose restrictions upon the Ministry of Foreign Affairs	2018-04-05	Memorial for the annulment of the Award of 13 September 2016
<u>C284e</u> <u>C284f</u>	Decision of the Civil Court n° 28 of Santiago based on the request of 5 April 2018 of the PAF for restrictions on the Ministry of Foreign Affairs	2018-04-20	Id.
<u>C290e</u> <u>C290f</u>	Appeal by the President Allende Foundation against the Decision of 20 April 2018 of Civil Court n°28 of Santiago	2018-04-25	Id.

Exhibit N° II. LEGAL EXHIBITS

Date

Procedure

<u>CL246</u>	<i>Libananco Holdings Co. Ltd v. Republic of Turkey</i> , Decision on Preliminary Issues	2008-06-23	Memorial for the annulment of the Award of 13 September 2016
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<u>CL247</u>	Kolo (A.) <i>Witness Intimidation, Tampering and Other Related Abuses of Process in Investment Arbitration: Possible Remedies Available to the Arbitral Tribunal</i>, <u>Arbitration International</u>, Vol. 26, No. 1, 2010	2010	Id.
<u>CL248</u>	Edna Sussman-Solomon Ebere, <i>All's Fair in Love and War- Or Is It? Reflections on Ethical Standards for Counsel in International Arbitration</i>, 22 Am. Rev. Intl. Arb. 611, 617 (2012)	2012	Id.
<u>CL249</u>	Rogers (C.A.), <i>Lawyers Without Borders</i>, 30 U. Pa. J. Int'l L. 1035, 1085 (2009)	2009	Id.
<u>CL250</u>	Born (G.A.), <i>International Commercial Arbitration</i> (2014), Ch. VIII, Obligation to Arbitrate in Good Faith	2014	Id.
<u>CL251</u>	<i>Methanex v. USA</i>, Final Award on Jurisdiction and Merits	2005-08-03	Id.