

[UNOFFICIAL TRANSLATION]

July 1, 2017

The Secretary-General of the Permanent Court of Arbitration

Peace Palace

Carnegieplein 2

2517 KJ The Hague

Netherlands

CPA Case # AA662- “President Allende” Foundation et al. v. the State of Chile

Dear Secretary General,

The Claimants acknowledge receipt of the communication dated June 30 by the State of Chile indicating that it has not yet unambiguously and without conditions or qualifications, named as its arbitrator Mr. Stephen L. Drymer.

The responding State has not respected the 30-day period that Rule 9(2) provides for the nomination of the second arbitrator, this period having ended June 17. Consequently, the Claimants respectfully request that, in accordance with Rule 9(2) of the UNCITRAL Rules, you appoint the second arbitrator.

The questions relative to jurisdiction and/or admissibility that have been raised [by the respondent] concerning the Notice of Arbitration are a matter for the tribunal. Pursuant to Articles 23 and 21 of the UNCITRAL Rules, the Claimants will fully and vigorously plead their position on these matters when the tribunal, once properly constituted, gives them the possibility of replying to the Response to the Notice of Arbitration referred to in article 4 as a statement of defence.

For now the Claimants limit themselves to recalling the principle of competence-competence, a fundamental principle of international arbitration and the fact that in its communication the State of Chile has not contested-and nor could it seriously contest-that it has given its

consent to arbitration under the UNCITRAL Rules in Article 10 (3) of the Spain-Chile BIT, in force since 29 March 1994, an act of consent that is clear and irrefutable.¹

While some arbitral tribunals have examined the possibility that parallel proceedings could constitute an abuse when an investor has made its claim in relation to “the same host State measures and the same harm”², or others have determined that in parallel proceedings “*there is no risk occasioned by the absence of a tribunal competent to determine the (...) portion of the claim*”³ [where each of the two tribunals has jurisdiction only over one portion], by contrast, in the present matter, the Notice of Arbitration of April 12 2017 clearly indicated:

- a) That the dispute submitted to arbitration, which arose for the first time the 24th of July 2008, is subsequent to the [ICSID] arbitral award of 8 May 2008⁴, now *res judicata*, which found that the State of Chile had violated its obligation of fair and equitable treatment, including the denial of justice, to the Respondents, putting an end to the dispute which arose between the parties in 1995;
- b) That the tribunal that made the arbitral award of 13 September 2016⁵ declared, at the request of the State of Chile, that the dispute that first arose on the 24th of July 2008 is outside the jurisdictional ambit -for reasons *ratione temporis*, among others- the ambit limited, again at the request of Chile, exclusively to the dispute that the parties submitted to ICSID 6 November 1997 (paragraphs 12-16 of the Notice of Arbitration of April 12 2017);
- c) That the Notice of Arbitration does not state any claim that is likely to lead to contradictory reasons or not respect the principles *ne bis in idem* or *res iudicata*.

This being said, the Claimants reject all other contentions in the communication of the Respondent as argumentative and without any basis, and as outside the jurisdiction of the arbitral Tribunal and without relevance to the Notice of Arbitration.

We remain at your disposal for any further information you may require.

Respectfully,

Dr Juan E. Garces

Counsel to the President Allende Foundation, Victor Pey Casado and Coral Pey Grebe.

¹ Exhibit A6, available on <http://bit.ly/2uuLPGX>

² *Orascam v. Algeria*, arbitral award of 31 May 2017, paragraph 545, available on <http://bit.ly/2uvW2Tu>

³ *Ampal v. Egypt*, Decision on Jurisdiction of 1 February 2016, paragraph 333, available on <http://bit.ly/2txJBZZ>

⁴ Available on <http://bit.ly/2s969gu>

⁵ Paragraphe 216, available on <http://bit.ly/2twVCz7>