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 International Center for Settlement of  
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 Washington, D.C. 20433

By fax (00 1 2025222615)

Paris, July 3, 2006

**Ref. : Victor Pey Casado and others v. Republic of Chile (ICSID Case N°. ARB-98-2)**

Dear Ms. Stevens,

Dr. Juan E. Garcés, Mr. Samuel Buffone of Ropes & Gray and I acknowledge receipt with astonishment of the letter from counsel for the Republic of Chile dated June 22 which prompts the following remarks:

As you know the resignation of the arbitrator appointed by the Republic of Chile has not been accepted by the Arbitral Tribunal. Consequently, the Republic of Chile has forfeited its right to appoint a co-arbitrator as well as to intervene in the process of appointment of the arbitrator to fill the vacancy (article 56(3) of the ICSID Convention and article 11(2)(a) of the Arbitration Rules).

According to article 11(2) (a) of the Arbitration Rules, the Chairman of the Administrative Council was to appoint a co-arbitrator to fill the vacancy within 30 days of the decision by the Arbitral Tribunal refusing to consent to the resignation of the Arbitrator appointed by the Republic of Chile, i.e. at the latest on May 25.

The Claimants requested that this time limit be respected and have objected, so far unsuccessfully, to the request by the Republic of Chile for the disqualification of Professor Brigitte Stern as the replacement for Mr. Galo Leoro Franco disqualified.

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In its letter dated June 22, 2006, the Republic of Chile attempts once again to exercise a veto, which exceeds its prerogative, by objecting to the appointment of Professor Emmanuel Gaillard as arbitrator in replacement of former arbitrator Galo Leoro Franco.

We hereby respectfully request that no consideration be given to Chile's groundless criticisms relating to an alleged lack of independence of Professor Emmanuel Gaillard, and that he be appointed as promptly as possible. Any other position would result in a clear-cut violation of articles 56(3) and 11(2) (a) of the ICSID Convention and the Arbitration Rules respectively.

Should the Republic of Chile persist in its request to disqualify Professor Emmanuel Gaillard, it may submit such a request in due time to the Arbitral Tribunal in accordance with article 9 of the Arbitration Rules.

In any event and for the sake of completeness, the criticism raised by the Republic of Chile relating to the alleged lack of independence of Professor Emmanuel Gaillard is particularly fallacious.

Indeed the Republic of Chile relies on the flawed argument that both, Professor Emmanuel Gaillard along with the law firm Shearman & Sterling, of which he is a partner, may not be independent from the Algerian state company SONATRACH, and thus from the Republic of Algeria, and consequently, from the current Minister of Foreign Affairs, Mr. Bedjaoui. Mr. Bedjaoui was disqualified at the initiative of the Republic of Chile on grounds which, to our knowledge, remain strictly confidential.

Such an argument by the Republic of Chile must be definitively dismissed on the simple observation that neither SONATRACH nor the Republic of Algeria is a party to the present proceedings.

Fully aware of this fact, the Government of Chile had the common sense not objected to the appointment as Arbitrator, in April 4 2006, of Mr. Chemloul who, in the past, worked for SONATRACH and who is an Algerian national.

Furthermore the Republic of Chile and its attorneys are suggesting that Mr. Gaillard and the law firm Shearman & Sterling could be influenced by "*their current and future financial interests*" because of their relationship with a client such as SONATRACH. Such a statement could be amusing in other circumstances. It will suffice for us to remind that, beyond the undisputed professional qualifications of Professor Emmanuel Gaillard, neither his financial interests nor those of Shearman & Sterling are dependent upon any specific client.

Except if ICSID considers it appropriate, it appears therefore useless to enter into the Republic of Chile's line of arguments relating to the relationships allegedly existing between Professor Emmanuel Gaillard and Algeria or SONATRACH.

In addition, the Republic of Chile mentions the fact that Professor Emmanuel Gaillard was acting for investors in an ICSID case in which issues, that the Republic of Chile considers as "*very limited*", relating to the nationality of natural persons, pursuant to article 25 (2) (a) of



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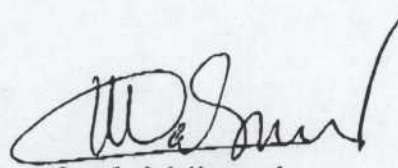
the ICSID Convention, were raised. The Republic of Chile alleges that the line of arguments developed by Professor Gaillard in that case would be contrary to the position sustained by the Republic of Chile in the present case.

As the Republic of Chile admits, this does not constitute a ground for exclusion from an Arbitral Tribunal. Should nonetheless the ICSID consider this matter as relevant, the Claimants would demonstrate that the dispute over nationality in the present case is totally different from the one that took place in the Champion Trading case.

Considering the above the Claimants hereby respectfully request that the ICSID confirm the appointment of Professor Emmanuel Gaillard as Arbitrator in replacement of Mr. Galo Leoro Franco.

Finally, considering the independence, the professional qualifications and the high reputation of a individual such as Professor Emmanuel Gaillard if the ICSID were to take into account the fallacious arguments raised by the Republic of Chile, it would have the practical consequences of granting the Republic of Chile the right to object to any appointment carried out by the ICSID, until the latter identifies and appoints the very Arbitrator whom the Republic of Chile would itself have appointed, in direct violation of Articles 56(3) of the Convention and 11(2)(a) of the Arbitration Rules.

Sincerely yours,



Carole Malinvaud  
Avocat à la Cour