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 27 AUGUST 1993 (THE "TREATY") AND THE UNCITRAL ARBITRATION RULES 1976 (THE "UNCITRAL RULES")

BETWEEN:-

1. CHEVRON CORPORATION
2. TEXACO PETROLEUM COMPANY

(both of the United States of America)

The First and Second Claimants

- and –

THE REPUBLIC OF ECUADOR

The Respondent

FOURTH INTERIM AWARD ON INTERIM MEASURES

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dated 7 February 2013

THE ARBITRATION TRIBUNAL:

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

Administrative Secretary: Martin Doe

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PART I: THE CLAIMANTS' CURRENT APPLICATION

(I) THE CLAIMANTS' SEVENTH REQUEST FOR INTERIM MEASURES OF 1 JUNE 2012

1. On 30 May 2012, the Lago Agrio Plaintiffs initiated proceedings for the recognition and enforcement of the Lago Agrio Judgment in the Superior Court of Justice in Ontario, Canada, against Chevron and two wholly-owned subsidiaries, Chevron Canada Limited and Chevron Canada Finance Limited (the "Canadian proceedings").

2. By letter dated 1 June 2012, the Claimants requested further interim relief from the Tribunal in relation to these Canadian proceedings (the "Claimants' Seventh Request for Interim Measures"). This relief was sought in addition to the Orders and Interim Awards on Interim Measures made earlier in these arbitration proceedings directed at the enforcement of the Lago Agrio Judgment, which are set out below in Part Two of this Fourth Interim Award.

3. By letter dated 20 June 2012, the Respondent requested more time to respond to the Claimants' Seventh Request for Interim Measures and, separately, "that the Tribunal find that the Claimants are in violation of the Tribunal's Orders on Interim Measures or otherwise require that the Claimants' cease their efforts to terminate Ecuador's U.S. trade benefits on the basis of the pending arbitration".

4. By letter dated 27 June 2012, the Claimants responded to the Respondent's letter dated 20 June 2012.

5. The Tribunal subsequently issued its Procedural Order No. 12 dated 29 June 2012, which provided as follows:

> *"1. The Tribunal refers to the Claimants' application for revised interim measures and other matters made by letters dated 1 June 2012, the Respondent's response and application by letter dated 20 June 2012 and the Claimants' letter dated 27 June 2012.*
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> *2. As regards the Respondent's application (page 3 of its letter dated 20 June 2012), the Tribunal grants the Respondent more time to respond substantively in writing to the Claimants' letters dated 1 and 27 June 2012; but the Tribunal requires that: (i) such response is submitted by the Respondent no later than 15 August 2012, (ii) with the Claimants' replying substantively in writing to such response no later than 14 September 2012 and (iii) the Respondent responding in writing to such reply no later than 12 October 2012.*
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> *3. The Tribunal currently intends that the Claimant's application and the Respondent's opposition to such application shall be addressed by the Parties during the hearing currently fixed for 26 and 27 November 2012, for which additional time shall be made available.*
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> *4. However, depending on events over this summer and autumn, it may become necessary for the Tribunal to convene a special hearing before November 2012, at short notice to the Parties."*

6. On 27 June 2012, the Lago Agrio Plaintiffs initiated proceedings for the recognition and enforcement of the Lago Agrio Judgment against Chevron Corporation in the Superior Court of Justice in Brasília, Brazil (the "Brazilian proceedings").

7. By letter dated 9 July 2012, the Tribunal requested that the Respondent add the Brazilian proceedings as a further item to be covered in its written response already ordered by the Tribunal for 15 August 2012 under paragraph 2 of its Procedural Order No 12 of 29 June 2012.

8. By letter dated 7 August 2012, the Claimants (i) informed the Tribunal that the Lago Agrio Court had on 3 August 2012 issued a *mandamiento de ejecución*, formally ordering payment of the sum of the Lago Agrio Judgment; and (ii) requested further relief from the Tribunal in relation to this alleged breach of the Tribunal's orders and awards on interim measures, joining this additional request to their Seventh Request for Interim Measures.

9. By letter dated 15 August 2012, the Respondent responded to the Claimants' Seventh Request for Interim Measures.

10. By letter dated 14 September 2012, the Claimants responded to the Respondent's letter dated 15 August 2012.

11. By letter dated 12 October 2012, the Respondent responded to the Claimants' letter dated 14 September 2012.

12. By letter dated 16 October 2012, the Claimants informed the Tribunal of certain orders for execution issued against Chevron and its subsidiaries by the Lago Agrio Court, as well as of certain statements made by Ecuadorian public authorities.

13. By letter dated 7 November 2012, the Claimants, *inter alia*, informed the Tribunal of (i) certain orders issued by the Argentine courts against Chevron subsidiaries located in Argentina for the enforcement of the Lago Agrio Judgment against those subsidiaries (the "Argentinean proceedings"); (ii) a decision issued by the Lago Agrio Court expanding the scope of its earlier execution orders for the Lago Agrio Judgment and granting a request for letters rogatory to be sent to corresponding foreign authorities for its enforcement, and (iii) an application made by the Government of Ecuador before the Lago Agrio Court to revoke the latter's execution order in respect of the USD 96 million *Commercial Cases Award* (but not the Lago Agrio Judgment itself).

14. By letter dated 21 November 2012, the Respondent responded to the Claimants' letter dated 7 November 2012.

(II) THE ORAL HEARING OF 26-28 NOVEMBER 2012

15. On 26-28 November 2012, an oral hearing was held in London regarding the Track 1 merits issues, as well as the Claimants' Seventh Request for Interim Measures (the "November Oral Hearing").

16. The November Oral Hearing was attended by the Parties' legal representatives, as follows: (i) for the Claimants, Mr. Hewitt Pate (Chevron), Mr. Ricardo Reis Veiga (Chevron), Mr. José Martin (Chevron), Ms. Tanya Valli (Chevron), Professor James Crawford SC (Matrix Chambers), Mr. R. Doak Bishop (King & Spalding), Mr. Edward Kehoe (King & Spalding),

Mr. Wade Coriell (King & Spalding), Mr. David Weiss (King & Spalding), Ms. Elizabeth Silbert (King & Spalding), Ms. Kristi Jacques (King & Spalding), Mr. Jorge Mattamouros (King & Spalding), Ms. Sara McBrearty (King & Spalding), Ms. Zhennia Silverman (King & Spalding) and Ms. Carol Tamez (King & Spalding), Mr. Luke A. Sobota (Jones Day), Mr. Francisco Aninat (Jones Day), Ms. Andrea Neuman (Gibson, Dunn & Crutcher), Mr. Daniel Sullivan (Gibson, Dunn & Crutcher); and (ii) for the Respondent, Dr. Diego García Carrión (Attorney-General of Ecuador), Dr. Christel Gaibor (Director of International Disputes, Attorney General's Office), Dr. Cristina Viteri (Counsel, Attorney General's Office), Professor Zachary Douglas (Matrix Chambers) – in part, Mr. Luis González (Matrix Chambers), Mr. Eric Bloom (Winston & Strawn), Mr. Ricardo Ugarte (Winston & Strawn), Mr. Tomás Leonard (Winston & Strawn), Ms. Nicole Silver (Winston & Strawn), Ms. Carolina Romero (Winston & Strawn) and Mr. Gregory Ewing (Winston & Strawn).

17. On the first day of the November Oral Hearing (26 November 2012), Mr. Hewitt Pate, Chevron's General Counsel, made the following statement (in English), which is appropriate to cite in full, as recorded in the English transcript:

> *"… Mr. President and Members of the Tribunal, Chevron appreciates this opportunity to appear before you again today, and Chevron looks forward to presenting its case on the merits on Phase I and to demonstrating why Texaco's completion of its remediation and social programs and the Releases it obtained in 1995 fully settled its environmental liability in Ecuador.*
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> *That settlement should have precluded the litigation that began in 2003 as a cooperative enterprise of American [Lago Agrio] Plaintiffs' lawyers and the Government of Ecuador. Recall that before Chevron brought this proceeding, Ecuador used to proclaim that it would be getting 90 percent of the proceeds of that litigation.*
>
> *An equally important aspect of today's hearing concerns this Tribunal's authority to protect its own jurisdiction over the merits of this case. On February 16th of this year, the Tribunal in its Second Interim Award ordered Ecuador to take all measures necessary to prevent enforcement of the Lago Agrio Judgment within and without Ecuador. Since that time, Ecuador has not only failed to prevent enforcement, but affirmatively acted to promote enforcement actions that have now been filed against Chevron Affiliates in Canada, Argentina, and Brazil.*
>
> *With public encouragement from President Correa, Ecuador has taken numerous actions in support of enforcement. The Lago Agrio Court has acted at the bidding of the Plaintiffs' lawyers. It has issued multiple orders purporting to declare numerous Chevron subsidiary and affiliate companies as debtors on the Lago Agrio Judgment. Those Orders have been issued with no notice to Chevron.*
>
> *The Orders also purport to embargo Chevron assets in Argentina and Colombia.*
>
> *Ecuador's Minister of Foreign Affairs, apostilled the power of attorney by Pablo Fajardo in favor of an Argentine law firm, when the Lago Agrio Court issued letters rogatory in support of the Plaintiffs' request for a freezing order in Argentina, the Ecuadorian Transitional Judicial Council certified these letters and the Minister of Foreign Affairs apostiled them.*
>
> *Last month the Lago Agrio Court sent a letter on Republic of Ecuador letterhead to the bank holding the remaining accounts of TexPet in Ecuador ordering the bank to freeze all accounts relating to Chevron. When the Lago Agrio Court added Chevron's $96 million commercial cases arbitration Award against Ecuador to its freezing order, the Attorney General of Ecuador finally appeared. He publicly sought revocation of that order, but only*

as to the 96 million dollar Commercial Case Award. There was no objection to the rest of the activity taken in violation of this Tribunal's Awards.

Enforcement actions, therefore, continue both within Ecuador and in three countries without Ecuador, and the Plaintiffs' lawyers promise more enforcement cases to come. In Argentina, the Plaintiffs have now obtained an ex parte freezing order preventing Chevron Affiliates from making and receiving the payments needed to run their operations in Argentina. Chevron is addressing this matter through the courts of Argentina, but the embargo in the meantime may prove to have serious consequences not only for Chevron's Affiliates, but for their employees, and for Argentina.

It is the Plaintiffs' stated goal to make it impossible for Chevron entities to invest further in Argentina.

If the Plaintiffs seriously believe they possess a legitimate judgment, they would seek to enforce it in the United States where Chevron can be found. Instead, they proceed on an international campaign of disruption and threats, hoping that Chevron will give in and pay them money without regard to the merits. They could not be doing this without the active and passive support of Ecuador.

If this Tribunal is to maintain its own authority to reach a decision on the merits or to give Chevron a meaningful opportunity to vindicate its legal rights, strong relief is needed in the format of a declaration from this Tribunal and other measures.

As always, when I address this Tribunal, I will reiterate that Chevron has no desire for conflict with any sovereign. Texaco was a good partner to Ecuador for 20 years, generating $23 billion for Ecuador while Texaco earned $500 million, and Texaco cleaned up its share.

Ecuador has claimed that Chevron's goal in seeking a declaration of breach from this Tribunal is to cause revocation of Ecuador's trade benefits with the United States, but Chevron gains no benefit from that result. What Chevron seeks is for Ecuador to stop its misconduct and respect this Tribunal's orders.

To repeat myself once again, Chevron would welcome an opportunity for constructive dialogue with Ecuador and urges Ecuador to live up to its promises. In the meantime, we appreciate the opportunity to appear before this Tribunal and to combat a fraudulent and farcical judgment by invoking the rule of law. Thank you."

18. On the same first day of the November Oral Hearing, Dr. Diego García Carrión, Attorney General of Ecuador, made the following response (as interpreted from Spanish and as now recorded in the English transcript) as follows:

"… Mr. President, Members of the Tribunal, today we approach the end of more than seven years of litigation over Claimants' allegations of breach of the 1995 Settlement Agreements. Claimant first raised their claims in prior litigation in New York. Back then, Claimants sought both to hold the Republic liable under a Joint Operating Agreement, and to hold the Republic liable for the alleged breach of the 1995 Settlement Agreement under theories of laws virtually identical to those raised here, albeit then under the labels of parens patriae.

At the time of the New York litigation, Claimants' public relations machine condemned the Republic in public, and in political forums as a recalcitrant State that refuses to comply with its contractual obligations. But after years of litigation, both the New York courts and the Court of Appeals of the Second Circuit summarily rejected Claimants' allegations of

breach of the Joint Operating Agreement, finding that the Republic was not even a Party to that Agreement.

That Judgment signaled to the Claimant that the United States Court offered no prospects of success in respect to their then remaining claims for breach of the Settlement Agreement. In fact, the presiding U.S. District Court Judge noted the fallacy in Claimants' position considering it as highly unlikely that the 1995 Settlement Agreement would have neglected to mention the Aguinda claims if it had been intended to release those claims or to create an obligation to indemnify against them.

Claimant, obviously concerned that their breach of the settlement claim was likely facing the same fate as their other breach claims, chose to withdraw their earlier opposition to the Republic's motion to dismiss. They then allowed the case to die on jurisdictional grounds so that they could bring this identical claim to a more favorable forum.

Claimants filed this arbitration two months later, and they simultaneously relaunched their public relations campaign against the Republic.

Members of the Tribunal, the Parties have re-pleaded their arguments in relation to the breach-of-contract claim in this forum, and at this juncture it must be apparent to you as it was to the U.S. District Judge in New York that Claimants' breach of contractual allegations are illusory.

The 1995 Settlement Agreement contains no covenants regarding the Ecuadorian Government's purported obligation to indemnify, protect, or defend TexPet or any other Party for that matter, against claims by third parties. Nor does it bind third parties or trigger any liability for the Republic. And while the Claimants predicate their case here on the basis of distinction between the New York litigation and Lago Agrio dispute, the Second Circuit of New York has stated that this argument is without merit. That is the final word of the Court that granted Claimant's forum non conveniens dismissal in the Aguinda case.

Dear Members of the Tribunal, Claimants' accusations are based on non-existing contractual obligations but that has not stopped Claimants' public relations machine from attacking Ecuador as a country that refuses to abide by its contractual obligations. Nor has it stopped Claimants from waging a relentless attack against the Republic in the United States political arena, to deprive it of billions of dollars in foreign trade benefits.

Defending against this vicious campaign is demanding an enormous diplomatic effort and is seriously affecting the Republic's interest. I respectfully ask that you follow the United States Court's lead and put an end to this abuse of the legal process at your earliest convenience.

With your indulgence, I would like to also address a different but related issue. Claimants have sought and obtained protective measures that gave rise to various Interim Awards and now they seek a declaration of breach of these awards. It is now apparent that neither the request for the Interim Awards nor the relief sought herein is designed to protect any right in this arbitration from irreparable harm, but rather it's intended to disrupt Ecuador's bilateral relationship with the United States and inflict severe economic harm upon the Republic and its constituents. On an almost daily basis, Claimants' lobbyist firms have added the Interim Awards to the allegations of breach of the 1995 Settlement Agreement to press the United States Congress and Trade Representatives to take away more than a billion dollars in trade and thousands of jobs that will affect hundreds of thousands of Ecuadorian citizens.

Claimants now seek from this Tribunal a declaration of breach of those Interim Awards. I will not delve into legal issues relevant to the appropriateness of the relief that Claimants request, but I do want to caution this Tribunal about the gravity of a request that we regard as an unprecedented abuse of rights and the legal processes. A declaration of breach would serve no purpose other than to cause grave and irreparable economic harm to the Republic. The loss of international trade benefits would be irreversible, no matter what the outcome of these proceedings might be.

So, an irreparable harm will have been inflicted upon the Republic on the basis of allegations that to date the Republic has not had a full opportunity to answer. But several courts in the United States have looked into Claimants' allegations; and, while Claimants can point to certain findings by Judge Kaplan, the majority of the U.S. Courts that have considered Chevron's allegations have rejected its crime fraud allegations or otherwise declined to opine on them. And while powerful economies, such as the United States or Brazil, can impose billions of dollars in fines against companies like British Petroleum and Chevron for environmental liability, a declaration that the Republic is in breach of Interim Awards at this juncture for not having interfered in environmental litigation between private parties would confirm that Chevron was not misguided when it declared that "we cannot let small countries screw with us."

Mr. President and Members of the Tribunal, Claimants should not be allowed to deliberately turn this Tribunal into an instrument of their manipulation plan. With this, I finish my intervention and with your permission, Mr. President, I will hand the floor to Zachary Douglas who will continue representing the interests of Ecuador. Many thanks."

19. On the second day of the November Oral Hearing (27 November 2012), the Tribunal addressed the following invitation to the Respondent, as recorded in the English transcript:

"[The Tribunal]: … Now, returning to the preliminary issues, we would like to address a question to the Respondent. Now, please understand we've decided none of the merits in this case, but it is possible that in the enforcement proceedings in Canada, Brazil, or Argentina, the Respondent may have a special status as to how far those proceedings are pursued whilst these [arbitration] proceedings are pending.

It is possible that if the Claimants are right, the result of these [arbitration] proceedings would be a very significant monetary award against the Respondent in circumstances where, if execution had taken place outside Ecuador, in Canada, Brazil, Argentina, or elsewhere, the Respondent would be facing a difficulty in funding such an award without access to the proceeds of the [foreign] judgment.

What we would like to inquire of the Respondent is whether they have considered, and if they have considered whether they are minded to do it, to intervene in these enforcement proceedings to prevent execution of those foreign judgments whilst these [arbitration] proceedings are pending. This would be not only for itself in its own interests for the reasons I've just indicated, but also because the Respondent may be facing a conflict, a conflict as a party within these proceedings subject to the Orders and Awards of this Tribunal and, of course, other obligations and duties in regard to its own citizens and the Ecuadorian Judgment being in force within and without Ecuador."

20. On the last day of the November Oral Hearing (28 November 2012), the Respondent agreed to respond to the Tribunal's invitation within two weeks, as recorded in the English transcript:

"[The Respondent]: And just to conclude, Mr. President, we, of course, received the invitation by the Tribunal yesterday, and it is important to mention that we are taking note of that invitation and to also inform the Tribunal that this has not been the first time that we

have been discussing internally and at different levels the importance of the possibility that the State, the Attorney General can do--to do whatever is possible, legally possible, to comply with the Interim Awards.

And although the invitation yesterday is extremely important, we take note of the importance that the Tribunal has indicated. We would like to, of course, take time. Of course, we cannot decide one day or another what to do with--what to respond to the Members of the Tribunal today on an issue that, of course, involves serious legal considerations; and, for that purpose, we would like to reflect on that, and we, of course, cannot take a position right now. We need to go back. And, of course, the Attorney General cannot decide by himself issues as to determine whether there is a public interest, and whether it's justified. We're considering the options, the legal consequences, and then the constitutional limits that that would imply, and for that purpose, we would like and request the Tribunal if we could have some time to come back to the Tribunal and respond to that specific invitation.

[The Tribunal]: We will certainly address housekeeping later, but I wouldn't have thought that was a problem, subject to timing, obviously. This is a very important matter and a very important step to be very carefully considered.

[The Respondent]: Of course, and we would take the issue immediately to the point where we—thinking that we could do this in a period of two weeks.

[…]

[The Tribunal]: Can I raise another matter that the Tribunal has discussed; it is that we are very concerned about being overtaken by events. There is no purpose in a procedure like this, which is complicated, expensive, and difficult for all concerned if at the end of the day the piece of paper that's produced by the Tribunal is completely irrelevant because events have overtaken the Tribunal. Now, we have discussed the possibility, depending on events over the next few weeks, of advancing the hearing date by six months. It's only fair to mention that to you now because there will be an enormous change in preparations for a hearing advanced by six months when we had anticipated that January/February [2014] was the earliest date that could be fairly met by the Parties. But there is no point in having a hearing in 2014 for no purpose whatsoever. So, we're not making any order at the moment, but we're just telling you that that is an option which we'll be considering in the light of the events that may take place over the next few weeks. …

On Interim Measures, obviously we will await a response from the Respondent as indicated, and I think two weeks would be an acceptable period to the Tribunal. … But we are very concerned about the Respondent's potential position in this case. Please understand we've not decided any of the merits of this case, but on one view of the case it exposes Respondent potentially to quite serious difficulties …

I think all of us, both Parties and the Tribunal, have a common interest in ensuring that the proceedings are fair in all respects and effective, and obviously we're facing real difficulties with the possible developments of actions in other jurisdictions. And given the common interest that we have, I think the Tribunal would appreciate it if either Parties, both parties, had any thoughts as to steps which might be taken which would do something to assist the preservation of the fairness and the efficacy of the exercise of this Tribunal's jurisdiction.

[The Respondent]: I can certainly speak to that and really reiterate what Mr. Gonzalez said earlier [for the Respondent]. That is a subject that we have discussed, and had discussed at length, and one after yesterday's invitation from the President, we renewed that discussion

last night and expect to have some further extensive and serious discussions, and we will certainly advise the Tribunal within the timeframe that we agreed to.

[The Tribunal]: Well, thank you for that observation. We welcome it wholeheartedly, and we look forward to the response when it comes in due course. And if you need a little bit longer than two weeks, please let us know because we attach very considerable importance to somehow maintaining a status quo which doesn't infringe the substantive or procedural rights of either side. But we are in unchartered waters. I don't think any of us have quite seen the situation before; and we're all, at least the Tribunal, struggling for guidance as to how to maintain this balance."

(III) DEVELOPMENTS AFTER THE NOVEMBER ORAL HEARING

21. By letter dated 5 December 2012, the Claimants informed the Tribunal of certain developments arising since the November Oral Hearing. In regard to the Argentinean proceedings, the Claimants stated:

"… Since Claimants' remarks on the last day of the Track 1 hearing, the Plaintiffs' Argentine embargo proceedings continue to proceed apace. On November 28, 2012, the Argentine judge issued a clarification order at the request of two of Chevron Argentina's customers (YPF and Shell), which have been ordered to withhold 40% of all amounts payable to Chevron Argentina [footnote omitted]. These customers were uncertain of the scope of the embargo and whether taxes, including, inter alia, VAT and royalties, should be excluded from the sums subject to the 40% calculation. The judge ruled that the 40% must be applied on the amounts for the purchase of hydrocarbons net of "fiscal charges" of any nature [footnote omitted]. As to the merits of the Argentine embargo order, the Plaintiffs are due to file their response to Chevron's subsidiaries' defenses to that order today, December 5, 2012, after which time the Argentine Judge will be in a position to issue a ruling at any time on the continued application of the embargo order. In parallel to these embargo proceedings, Claimants understand that the Plaintiffs have escalated their attack against Chevron and its subsidiaries by initiating formal recognition proceedings of the Lago Agrio Judgment in Argentina ...."

22. The Claimants also reformulated their request for an urgent order or award (final or partial) to include the following relief:

"Claimants, therefore, respectfully request that the Tribunal urgently issue a Partial Final Award, or in the alternative an Interim Award, in the terms discussed at the Track 1 hearing, including that the Tribunal:

1. Declare that Ecuador is in breach of the First and Second Interim Awards;

2. Declare that pending the outcome of this arbitration, the Lago Agrio Judgment is not final, enforceable, or conclusive under Ecuadorian and international law;

3. Declare that Ecuador is responsible to Claimants for indemnification and damages for all damages, costs, expenses, and attorneys' fees incurred by Claimants as a result of its breach; and

4. Deposit the Partial Final Award without delay with the Registry of the District Court of The Hague, in accordance with Article 1058(1) of the Dutch Code of Civil Proceedings.

In sum, Claimants request from the Tribunal the strongest possible relief, in the strongest possible form, to preserve the fairness and efficacy of this arbitration."

23. By letter dated 6 December 2012, the Respondent responded to the Claimants' letter dated 5 December 2012, stating it would report on the "serious discussions ... ongoing in response to the Tribunal's invitation to find and suggest a mechanism to accomplish certain goals articulated by the Tribunal", not later than 14 December 2012.

24. By letter dated 7 December 2012, the Tribunal indicated as follows:

"The Tribunal acknowledges safe receipt of the Claimants' letter dated 5 December and the Respondent's letter dated 6 December 2012.

As there advised by the Respondent, the Tribunal intends to await the Respondent's further letter to be received by the Tribunal no later than 14 December 2012. The Tribunal also intends thereafter to provide to the Claimants a fair opportunity of responding to the Respondent's further letter.

For the time being, until receipt of the Respondent's further letter (or further order), the Tribunal requests that no further correspondence take place in regard to the Parties' differences over interim measures."

25. By letter of 14 December 2012, the Respondent requested more time, until 10 January 2013, to provide its substantive response to the Tribunal's invitation made during the November Oral Hearing.

26. By letter dated 16 December 2012, the Claimants opposed the Respondent's request for more time to respond to the Tribunal's invitation made at the end of the November Oral Hearing. As regards the Argentinean proceedings, the Claimants stated:

"The Argentine court has ordered Chevron Argentina's business partners to withhold 40% of any amounts owed to Chevron Argentina and ordered banks to re-apply the 40% embargo order to the 60% of these receivables that come into Chevron Argentina's accounts. The net effect is that 64% of Chevron Argentina's receivables are being withheld [footnote omitted]. Chevron Argentina has publicly stated that the embargo affects more than 90% of its revenues for the sale of crude [footnote omitted] and that due to taxation and the need to distribute revenue among joint-venturers, the actual net effect of the embargo is even greater than 100% for some of Chevron Argentina's operations.

An Argentine government representative has publicly stated that "[the province of] Neuquén could lose some 1,200 direct jobs" as a result of the embargo against Chevron [footnote omitted].The Secretary General of the Private Oil and Gas Union of Rio Negro and Neuquén has also said that the embargo "directly affects approximately 1,700 workers, which means the same number of families, affecting at least 6,800 residents in our region, very seriously threatening the social peace"[footnote omitted].

The Tribunal should be aware that, as Respondent knows, the Argentine court system is in recess from December 31, 2012 to Jan. 31, 2013. Respondent's request for further delay is thus a request that this Tribunal forego any action that could be effective against enforcement actions in violation of the Tribunal's prior awards until at least February 1, 2013.

Respondent has demonstrated repeatedly that this Tribunal can have no confidence in Respondent's compliance with the Tribunal's awards. Chevron respectfully submits that the Tribunal should therefore take actions that can be brought directly to the attention of the

courts of other nations. Specifically, the Tribunal should declare that the enforcement actions violate the Interim Awards issued by the Tribunal to preserve the status quo pending a decision on the merits, and that the enforcement actions are therefore contrary to international law."

27. By letter dated 17 December 2012, the Tribunal indicated as follows:

"The Tribunal has considered the letter dated 14 December 2012 from the Respondent, requesting further time to 10 January 2013 for the Respondent's substantive response to the Tribunal's invitation made at the end of the hearing on 28 November 2012.

The Tribunal confirms its view as to the significance of the Respondent's substantive response. Accordingly, the Tribunal is minded to grant the extension requested by the [Respondent], subject to any new urgent circumstances arising during this extended period.

The Tribunal acknowledges receipt of the Claimants' letter dated 16 December 2012 in response to the Respondent's letter dated 14 December 2012."

28. By letter dated 22 January 2013, the Respondent provided its substantive response to the Tribunal's invitation made during the November Oral Hearing. It is appropriate to cite here the substance of this response in full:

"On November 28, 2012, counsel for the Republic represented during the Track 1 Hearing on the Merits that the Respondent and counsel were re-engaged in serious discussions aimed at resolving the Tribunal's concerns about the enforcement actions commenced by the Lago Agrio Plaintiffs in courts outside Ecuador. The results of the extensive deliberations are outlined below.

At the outset, however, the Republic reiterates its concern that the Claimants have introduced the core elements of their "fraud" case on the merits through a series of applications for interim measures that have repeatedly required the Republic to respond to the Claimants' evolving set of allegations either spontaneously or over a period of weeks. As a result, the Tribunal has been forced to consider unprecedented requests for relief with far-reaching effects absent a full and complete record, and without affording the Republic the time it needed to critically examine the Claimants' and other available evidence. The Respondent has yet to file a substantive pleading in response to these allegations and respectfully requests that the Tribunal give careful consideration to the Respondent's Counter Memorial in Track II before taking any further action.

The interim measures — now interim awards — impose obvious and substantial legal conundrums for any public official trying to faithfully carry out his legal responsibilities. Whatever this Tribunal may currently and preliminarily conclude regarding the Lago Agrio judicial proceedings based on substantially less than a full record, the Tribunal presumably also understands that from a State official's perspective, the State's own courts have determined – albeit subject to further review at the cassation appellate level — that the Plaintiffs' lands, water, and air have been polluted, that Chevron is liable for that pollution, that over the course of many years the existing pollution has caused (and is continuing to cause) the Plaintiffs harm, and that the judgment in the underlying Ecuadorian action is intended, in part, to remedy that harm. Officials of the State, therefore, are caught between this Tribunal's Interim Awards, on the one hand, and the officials' legal duties and obligations under both domestic law and international obligations relating to equal treatment under the law that arise from international human rights conventions to which Ecuador is a party, on the other. Under the domestic legal regime, there is no conceivable basis for the Republic to interfere in private party litigation either within Ecuador or in foreign jurisdictions.

Claimants have construed the Interim Awards as imposing on the Republic an obligation to violate its Constitution and domestic laws. The Republic has not interpreted the Interim Awards as requiring State officials to violate their own laws and considers Claimants' position utterly untenable under any conceivable principle of law or equity.

Claimants assert that they are confronting imminent irreparable harm by the Lago Agrio Plaintiffs' successive enforcement actions. In fact, Plaintiffs' enforcement actions in Canada and Brazil pose no imminent threat at all to Chevron. The Republic has previously offered declarations of Canadian and Brazilian legal experts affirming that these enforcement actions will take years to resolve [Footnote 1 omitted]. These declarations remain uncontested. Additionally, though perhaps anecdotally, news coverage of the Canadian enforcement action suggests that Plaintiffs' effort to enforce against Chevron subsidiaries will be rejected [Footnote 2 omitted].

Plaintiffs' actions for recognition and enforcement in Argentina are no different. Those proceedings will take years to resolve and may well share the fate of the Canadian proceedings insofar as they are also targeted against Chevron subsidiaries. Argentina does, however, raise other issues.

In Argentina, special rules deriving from a Latin American convention on the enforcement of interim measures [Footnote 3 omitted] allowed the Plaintiffs to secure the temporary attachment of certain Chevron assets — and those of Chevron's subsidiaries in Argentina — pending a final determination on the merits of the recognition and enforcement action there. The purpose of the attachment proceedings is merely to ensure that Chevron does not dissipate its assets in the jurisdiction. Even here, however, Claimants' decision to characterize the Argentine developments as threatening "irreparable" harm to the company is plainly strategic. To date, Chevron's 10-K and 10-Q filings fail to advise either its shareholders or the capital markets that have been to the contrary, instead affirming that the ongoing proceedings pose no material harm to the company.

Moreover, under the applicable law, if Chevron fails to have the attachment order reversed on the grounds that the Argentine courts cannot reach assets of Chevron's subsidiaries, it still is entitled to post substitute collateral that would have the effect of denying the plaintiffs the right to freeze, attach or garnish income or bank accounts or otherwise affect Chevron's (or its subsidiaries') presence in Argentina. By offering substitute collateral, therefore, Chevron can eliminate any further alleged disruption to its Argentine operations for the foreseeable future. Indeed, Respondent is concerned that Chevron may eschew such a remedy based on its considered analysis that it is better to leverage any alleged disruption in Argentina to obtain even more dramatic relief here than it is to prevent the disruption in the first instance. In either event, it is clear that Chevron has the ability and wherewithal, should it choose to do so, to eliminate any disruption to its Argentine operations and thus eliminate any risk of imminent harm (irreparable or otherwise).

Interim Measures and Interim Awards are intended to ensure that this Tribunal's jurisdiction and its ability to grant meaningful relief are not impeded by developments on the ground. But no enforcement action brought by the Lago Agrio Plaintiffs — who are not coordinating with the Republic and who do not take orders from the Republic — will lead to collections of any portion of the Lago Agrio Judgment or the seizure of assets for a number of years. Accordingly, neither of the pending actions in Canada, Brazil or Argentina will affect this Tribunal's jurisdiction or its ability of rendering a monetary award [Footnote 4 omitted].

The Republic, as promised, has nonetheless considered (and re-considered) options in an effort to address the Tribunal's concerns regarding Plaintiffs' ongoing efforts to enforce

the judgment [Footnote 5 omitted]. The Republic considers that a combination of the following three actions should adequately address those concerns.

First, while the Respondent has no competence under domestic law to intervene in and move the Argentine court to lift the order of attachment currently in place, it might be possible to work with the Tribunal to remove any alleged immediate threat of harm to the Argentine subsidiaries. Chevron is currently under an obligation to mitigate damages. As such, as noted above, it could post substitute collateral, which could take the form of (i) a surety insurance ("Seguro de Caución"), (ii) a deposit in escrow in an international financial institution with operations in Argentina, (iii) a surety bond issued by an accredited financial institution with operations in Argentina, or (iv) any other form that Chevron might consider appropriate. The premise of this proposal is to find a way in which the Republic is not intervening in the private-party litigation while affording the Tribunal comfort that there is no possible imminent threat to Chevron's global operations. Should the Tribunal ultimately find against the Republic on the issue of denial of justice or breach of the BIT, the financial cost involved in structuring and implementing any of the foregoing alternatives may be computed within the quantum of any monetary award.

Second, in the interim, the Republic would not object to the Tribunal releasing the fifty million dollar bond currently held in escrow back to the Claimants if Chevron requested those funds to apply them against any cost in which it might incur while structuring and posting substitute collateral with the courts in Argentina.

Third, the Attorney General intends to file a letter with the National Court - specifically with the Chamber that has been recently appointed to hear Chevron's cassation appeal - to keep the National Court apprised of the existence of these arbitral proceedings and of the issues currently under consideration of the Tribunal.

We reiterate our affirmation that much time, thought and resources have been and are still being devoted to these issues. The Republic believes that the process might be advanced if the Tribunal should convene a short hearing to discuss, informally, these proposals and perhaps others that the Tribunal might consider on its own. Should the Tribunal consider it necessary to hold such hearing prior to Respondent's filing of the Track 2 Merits Counter-memorial, the Republic would respectfully request a one week extension of the February 18, 2013, deadline for such filing."

29. By letter dated 27 January 2013, at the request of the Tribunal (made on 23 January 2013), the Claimants replied to the Respondent's letter dated 22 January 2013, rejecting its contents as both "disappointing" and "wholly inadequate". The Claimants' letter concluded:

"Respondent's proposal for an informal hearing to discuss these matters – which is entirely unnecessary – is yet another effort to delay until real-time events overtake this arbitration, precisely what the Interim Awards were designed to prevent. Accordingly, Claimants respectfully request that the Tribunal (1) grant Claimants' requested relief as soon as possible [footnote omitted, referring to the Claimants' letters dated 5 and 16 December 2012] and (2) order an expedited briefing and hearing schedule for the Track 2 merits phase, as the Tribunal suggested at the close of the Track 1 hearing [footnote omitted], namely (i) Claimants' Reply Memorial on the Merits on April 25, 2013, (ii) Respondent's Rejoinder on the Merits on June 30, 2013, and (iii) a final Track 2 hearing on the merits in August 2013"

30. By letter dated 29 January 2012, the Respondent responded to the Claimants' letter dated 27 January 2013, refuting in particular the Claimants' request for an expedited procedure.

(IV) THE PARTIES' RELIEF SOUGHT FROM THE TRIBUNAL

31. By the Claimants' letter dated 1 June 2012 (pp. 2-3), the Claimants requested that the Tribunal issue a further interim award deciding as follows:

> *"(i) declaring that Ecuador is in breach of the First and Second Interim Awards on Interim Measures;*
>
> *(ii) declaring that, on account of Ecuador's breaches of the Tribunal's Interim Awards, Ecuador is responsible for, and shall reimburse Claimants for any and all attorneys' fees, costs, and other expenses incurred in defending, or preparing to defend against, recognition and enforcement actions related to the Lago Agrio Judgment; and*
>
> *(iii) cancelling the US$50 million bond requirement imposed by the Second Interim Award, returning the funds deposited by Claimants, and otherwise maintaining and reaffirming all other orders and aspects of the Second Interim Award."*

32. By the Respondent's letter dated 15 August 2012 (p. 6), the Respondent requested that the Tribunal decide the Claimants' Seventh Request for Interim Measures as follows:

> *"For the foregoing reasons, the Republic respectfully requests that this Tribunal declare that Claimants have failed to show the requisite elements for interim relief and accordingly deny the first two requests for interim protection in their June 1, 2012 letter. Should the Tribunal find that this interim relief would be warranted under the attendant circumstances, the Republic respectfully requests that the Tribunal exercise its discretion not to grant the relief requested and join resolution of this matter to the final adjudication of the merits of Claimants' claims."*

33. During the Claimants' opening statement at the November Oral Hearing, the Claimants submitted a further "Definitive Request for Relief", seeking the following relief from the Tribunal in regard to its Seventh Request for Interim Measures:

> *"I. <u>Request for an Immediate Interim Award as a Result of Ecuador's Breaches of the First and Second Interim Awards:</u>*
>
> *1. Declare that Ecuador is in breach of the First and Second Interim Awards;*
>
> *2. Declare that pending the outcome of this arbitration, the Lago Agrio Judgment is not final, enforceable, or conclusive under Ecuadorian and international law, and thus, is not subject to recognition and enforcement within or without Ecuador; and*
>
> *3. Declare that Ecuador is responsible to Claimants in indemnification and damages for all damages, costs, expenses, and attorneys' fees incurred by Claimants as a result of its breach."*

34. Following the November Oral Hearing, the Claimants sought further relief, as set out above in their letters dated 5 December 2012, 16 December 2012 and 27 January 2013; and the Respondent sought an order in regard to its application made by letter dated 22 January 2013, also as set out above.

PART II: THE TRIBUNAL'S ORDERS AND AWARDS

(I) THE FIRST ORDER ON INTERIM MEASURES OF 14 MAY 2010

35. On 23 September 2009, the Claimants served a Notice of Arbitration on the Respondent pursuant to Article VI(3)(a)(iii) of the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment, signed on 27 August 1993 (the "Treaty"), which provides that disputes arising under it may be submitted to an arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law of 1976 (the "UNCITRAL Rules").

36. On 29 September 2009, the Respondent received the Notice of Arbitration.

37. On 25 February 2010, through the appointment of V.V. Veeder QC as the presiding arbitrator by the Secretary-General of the PCA, the Tribunal was constituted.

38. On 26 March 2010, the Tribunal held a procedural meeting with the Parties by telephone conference-call to discuss, *inter alia*, the procedure in respect of a request for interim measures that the Claimants indicated they would soon submit to the Tribunal.

39. By e-mail message dated 1 April 2010, the Claimants submitted a Request for Interim Measures (here, the "First Request for Interim Measures").

40. By e-mail messages dated 3 May 2010, the Respondent submitted its Response to the First Request for Interim Measures.

41. By e-mail messages dated 7 May 2010, the Claimants submitted their Reply on the First Request for Interim Measures.

42. An oral hearing on interim measures and procedural meeting was held in London on 10-11 May 2010.

43. The Tribunal issued an Order on Interim Measures dated 14 May 2010 (the "First Order on Interim Measures"), the operative part of which ordered as follows:

> *"1. Until further decision the Tribunal takes, pursuant to Article 26(1) of the UNCITRAL Rules, the following interim measures up to and including the next procedural meeting beginning on 22 November 2010:*
>
> > *(i) The Claimants and the Respondent are both ordered to maintain, as far as possible the status quo and not to exacerbate the procedural and substantive disputes before this Tribunal, including (in particular but without limiting howsoever the generality of the foregoing) the avoidance of any public statement tending to compromise these arbitration proceedings;*
> >
> > *(ii) The Claimants and the Respondent are both ordered to refrain from any conduct likely to impair or otherwise adversely affect, directly or indirectly, the ability of the Tribunal to address fairly any issue raised by the Parties before this Tribunal;*

(iii) The Claimants and the Respondent are both ordered not to exert, directly or indirectly, any unlawful influence or pressure on the Court addressing the pending litigation in Ecuador known as the Lago Agrio Case;

(iv) The Claimants and the Respondent are ordered to inform the Tribunal (in writing) of the likely date for the issue by the Court of its judgment in the Lago Agrio Case as soon as such date becomes known to any of them;

(v) The Respondent is ordered to communicate (in writing and also by any other appropriate means) the Tribunal's invitation to the Court in the Lago Agrio Case to make known as a professional courtesy to the Tribunal the likely date for the issue by the Court of its judgment in the Lago Agrio Case; and, to that end, the Respondent is ordered to send to the Court the full text in Spanish and English of the Tribunal's present order; and

(vi) The Respondent is ordered to facilitate and not to discourage, by every appropriate means, the Claimants' engagement of legal experts, advisers and representatives from the Ecuadorian legal profession for the purpose of these arbitration proceedings (at the Claimants' own expense).

2. This Order is and shall remain subject to modification in the light of any future event, upon the Tribunal's own motion or upon any Party's application, particularly in the light of any new development in the Lago Agrio Case and the issue of the Court's judgement in such Case; and any of the Parties may apply to the Tribunal for such modification upon 24 hours' written notice.

3. This Order is made strictly without prejudice to the merits of the Parties' procedural and substantive disputes, including the Respondent's jurisdictional and admissibility objections and the merits of the Claimants' claims."

(II) THE SECOND ORDER ON INTERIM MEASURES OF 6 DECEMBER 2010

44. By letter dated 26 May 2010, the Claimants complained that the Respondent had breached the First Order on Interim Measures.

45. By letter dated 3 June 2010, the Respondent commented on the Claimants' letter of 26 May 2010, rejecting their complaint and raising its own complaint against the Claimants.

46. On 14 June 2010, after considering the letters from the Parties, the Tribunal issued its Procedural Order No. 4, *inter alia*, deciding that no breach of its order had been established against any Party.

47. By letter dated 27 October 2010, the Claimants presented an additional request for interim measures (here, the "Second Request for Interim Measures").

48. By letter dated 12 November 2010, the Respondent responded to the Second Request for Interim Measures.

49. A Hearing on Jurisdiction and Admissibility was held in London on 22-23 November 2010. It included further oral submissions by the Parties on the Claimants' Second Request for Interim Measures.

50. During the Hearing on Jurisdiction and Admissibility, the Respondent confirmed that it had no objection to the continuation of paragraphs 1(i), 1(ii), 1(iii), 1(iv) and 1(vi) of the Tribunal's First Order on Interim Measures.

51. The Tribunal issued its further Order on Interim Measures dated 6 December 2010 (the "Second Order on Interim Measures"), the operative part of which ordered as follows:

> *"1. Until further decision the Tribunal takes, pursuant to Article 26(1) of the UNCITRAL Rules, the following interim measures up to and including the date of issuance of the Tribunal's decision on jurisdiction:*
>
> *(i) The Claimants and the Respondent are both ordered to maintain, as far as possible the status quo and not to exacerbate the procedural and substantive disputes before this Tribunal, including (in particular but without limiting howsoever the generality of the foregoing) the avoidance of any public statement tending to compromise these arbitration proceedings;*
>
> *(ii) The Claimants and the Respondent are both ordered to refrain from any conduct likely to impair or otherwise adversely affect, directly or indirectly, the ability of the Tribunal to address fairly any issue raised by the Parties before this Tribunal;*
>
> *(iii) The Claimants and the Respondent are both ordered not to exert, directly or indirectly, any unlawful influence or pressure on the Court addressing the pending litigation in Ecuador known as the Lago Agrio Case;*
>
> *(iv) The Claimants and the Respondent are ordered to inform the Tribunal (in writing) of the likely date for the issue by the Court of its judgment in the Lago Agrio Case as soon as such date becomes known to any of them;*
>
> *(v) The Tribunal has decided, of its own motion, to write a letter to the Court in the Lago Agrio Case (in the form of the draft attached) inviting that Court to make known as a professional courtesy to the Tribunal the likely date for the issue of its judgment in that Case; and*
>
> *(vi) The Respondent is ordered to facilitate and not to discourage, by every appropriate means, the Claimants' engagement of legal experts, advisers and representatives from the Ecuadorian legal profession for the purpose of these arbitration proceedings (at the Claimants' own expense).*
>
> *2. This Order is and shall remain subject to modification in the light of any future event, upon the Tribunal's own motion or upon any Party's application, particularly in the light of any new development in the Lago Agrio Case and the issue of the Court's judgement in such Case; and any of the Parties may apply to the Tribunal for such modification upon 24 hours' written notice.*
>
> *3. This Order is made strictly without prejudice to the merits of the Parties' procedural and substantive disputes, including the Respondent's jurisdictional and admissibility objections and the merits of the Claimants' claims."*

(III) THE THIRD ORDER ON INTERIM MEASURES OF 28 JANUARY 2011

52. By letter dated 14 January 2011, the Claimants submitted a revised application for interim measures (here, the "Third Request for Interim Measures" and also "the Claimants' Second Application").

53. On 26 January 2011, the Tribunal heard the Parties' legal representatives at a procedural meeting (held by telephone conference-call) as regards the procedure required to address the Claimants' Third Request for Interim Measures and the Respondent's opposition to the Third Request for Interim Measures.

54. During the procedural meeting, the Claimants indicated that the Tribunal should determine their Third Request for Interim Measures urgently without any oral hearing (i.e., on the Parties' written submissions and other materials already submitted); the Respondent opposed such procedure and requested an oral hearing preceded by an opportunity to make written submissions opposing the Third Request for Interim Measures; and the Claimants indicated that if their application could not be determined by the Tribunal timeously, the Claimants requested an immediate "temporary order" in like terms pending such determination.

55. The Tribunal issued its Procedural Order and Further Order on Interim Measures dated 28 January 2011 (the "Third Order on Interim Measures"), the operative part of which decided as follows:

> *"(A) The Respondent shall submit its written submissions in response to the Claimants' [Third Request for Interim Measures] as soon as practicable but no later than 1700 hours (Netherlands time) on Friday, 4 February 2011 (or such other date as may be ordered by the Tribunal);*
>
> *(B) There shall be an oral hearing on the Claimants' [Third Request for Interim Measures] and the Respondent's opposition thereto at the Peace Palace, The Hague, provisionally on Sunday, 6 February 2011 (or such other date as may be ordered by the Tribunal) at a time and in a form to be decided later by the Tribunal;*
>
> *(C) Pending such oral hearing or further order (on application by any Party or by the Tribunal upon its own initiative), the Tribunal takes the following interim measures pursuant to Article 26 of the UNCITRAL Arbitration Rules:*
>
> *1. The Tribunal re-confirms Paragraphs 1(i) to (iv) of its Order dated 14 May 2010 (as amended); namely:*
>
> *(i) The Claimants and the Respondent are both ordered to maintain, as far as possible the status quo and not to exacerbate the procedural and substantive disputes before this Tribunal, including (in particular but without limiting howsoever the generality of the foregoing) the avoidance of any public statement tending to compromise these arbitration proceedings;*
>
> *(ii) The Claimants and the Respondent are both ordered to refrain from any conduct likely to impair or otherwise adversely affect, directly or indirectly, the ability of the Tribunal to address fairly any issue raised by the Parties before this Tribunal;*

(iii) The Claimants and the Respondent are both ordered not to exert, directly or indirectly, any unlawful influence or pressure on the Court addressing the pending litigation in Ecuador known as the Lago Agrio Case;

(iv) The Claimants and the Respondent are ordered to inform the Tribunal (in writing) of the likely date for the issue by the Court of its judgment in the Lago Agrio Case as soon as such date becomes known to any of them;

(v) The Tribunal has decided, of its own motion, to write a letter to the Court in the Lago Agrio Case (in the form of the draft attached) inviting that Court to make known as a professional courtesy to the Tribunal the likely date for the issue of its judgment in that Case; and

(vi) The Respondent is ordered to facilitate and not to discourage, by every appropriate means, the Claimants' engagement of legal experts, advisers and representatives from the Ecuadorian legal profession for the purpose of these arbitration proceedings (at the Claimants' own expense).

2. *Whilst the Lago Agrio plaintiffs are not named parties to these arbitration proceedings and the Respondent is not a named party to the Lago Agrio Case, the Tribunal records that, as a matter of international law, a State may be responsible for the conduct of its organs, including its judicial organs, as expressed in Chapter II of Part One of the International Law Commission's Articles on State Responsibility;*

3. *If it were established that any judgment made by an Ecuadorian court in the Lago Agrio Case was a breach of an obligation by the Respondent owed to the Claimants as a matter of international law, the Tribunal records that any loss arising from the enforcement of such judgment (within and without Ecuador) may be losses for which the Respondent would be responsible to the Claimants under international law, as expressed in Part Two of the International Law Commission's Articles on State Responsibility; and*

4. *This order for further interim measures is made by the Tribunal strictly without prejudice to any Party's case as regards the Tribunal's jurisdiction, the Claimants' [Third Request for Interim Measures and other applications of 14 January 2011], the Respondent's opposition to [the Claimants' Third Request for Interim Measures and other applications of 14 January 2011] and any claim or defence by any Party as to the merits of the Parties' dispute."*

(IV) THE FOURTH ORDER ON INTERIM MEASURES OF 9 FEBRUARY 2011

56. By letter dated 1 February 2011, the Respondent declared its intention not to make written submissions on the Claimants' Third Request for Interim Measures, in accordance with Paragraph A of the Tribunal's Third Order on Interim Measures.

57. On 6 February 2011, an oral hearing was held at the Peace Palace in The Hague at which the Parties made oral submissions to the Tribunal on the Claimants' Third Request for Interim Measures.

58. On 6 February 2011, at the conclusion of the hearing, the Tribunal continued, until further order, Paragraph C of its Third Order on Interim Measures.

59. The Tribunal issued its further Order on Interim Measures dated 9 February 2011 (the "Fourth Order on Interim Measures"), the operative part of which decided as follows:

> *"(A) As to jurisdiction, the Tribunal records that it has not yet determined the Respondent's challenge to its jurisdiction (as recorded in the fourth preamble to its Order of 28 January 2011). Nonetheless, for the limited purpose of the present decision, the Tribunal provisionally assumes that it has jurisdiction to decide upon the Claimants' Second Application for Interim Measures on the ground that the Claimants have established, to the satisfaction of the Tribunal, a sufficient case for the existence of such jurisdiction at this preliminary stage of these arbitration proceedings under the written arbitration agreement invoked by the Claimants against the Respondent under the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment (the "BIT"), incorporating by reference the 1976 UNCITRAL Arbitration Rules (the "UNCITRAL Rules");*
>
> *(B) The Tribunal notes that: (i) Article 26 of the UNCITRAL Rules permits a tribunal, at the request of a party, to take interim measures (established in the form of an order or award) in respect of the subject-matter of the parties' dispute; (ii) Article 32(1) of the UNCITRAL Rules permits a tribunal to make (inter alia) an award in the form of a final, partial or interim award; (iii) Article 32(2) of the UNCITRAL Rules provides that any award is final and binding on the parties, with the parties undertaking to carry out such award without delay; and (iv) Articles VI.3(6) of the BIT provides (inter alia) that an award rendered pursuant to Article VI.3(a)(iii) of the BIT under the UNCITRAL Rules shall be binding on the parties to the dispute, with the Contracting Parties undertaking to carry out without delay the provisions of any such award and to provide in its territory for its enforcement;*
>
> *(C) As to form, the Tribunal records that, whilst this decision under Article 26 of the UNCITRAL Rules is made in the form of an order and not an interim award, given the urgency required for such decision, the Tribunal may decide (upon its own initiative or any Party's request) to confirm such order at a later date in the form of an interim award under Articles 26 and 32 of the UNCITRAL Rules, without the Tribunal hereby intending conclusively to determine the status of this decision, one way or the other, as an award under the 1958 New York Convention.*
>
> *(D) As to the grounds for the Claimants' Second Application, the Tribunal concludes that the Claimants have made out a sufficient case, to the Tribunal's satisfaction, under Article 26 of the UNCITRAL Rules, for the order made below in the discretionary exercise of the Tribunal's jurisdiction to take interim measures in respect of the subject-matter of the Parties' dispute;*
>
> *(E) Bearing in mind the Respondent's several obligations under the BIT and international law, including the Respondent's obligation to carry out and provide for the enforcement of an award on the merits of the Parties' dispute in these arbitration proceedings (assuming this Tribunal's jurisdiction to make such an award), the Tribunal orders:*

(i) the Respondent 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; and

(ii) the Respondent's Government to inform this Tribunal, by the Respondent's legal representatives in these arbitration proceedings, of all measures which the Respondent has taken for the implementation of this order for interim measures;

pending further order or award in these arbitration proceedings, including the Tribunal's award on jurisdiction or (assuming jurisdiction) on the merits;

(F) The Tribunal records that it is common ground between the Claimants and the Respondent in these arbitration proceedings, as also re-confirmed by the Respondent at the oral hearing on 6 February 2011 (page 107 of the English transcript and page 101 of the Spanish transcript) that, under Ecuadorian law, a judgment entered in a domestic proceeding at first instance (such as a first-instance judgment in the Lago Agrio Case) is not final, conclusive or enforceable during the pendency of a first-level appeal until at least such time as that appeal has been decided by the first-level appellate court;

(G) The Tribunal continues Paragraph C (1) to (3) of its order of 28 January 2011 (which order is incorporated by reference herein);

(H) The Tribunal decides further that the Claimants shall be legally responsible, jointly and severally, to the Respondent for any costs or losses which the Respondent may suffer in performing its obligations under this order, as may be decided by the Tribunal within these arbitration proceedings (to the exclusion of any other jurisdiction);

(I) This order shall be immediately final and binding upon all Parties, subject only to any subsequent variation made by the Tribunal (upon either its own initiative or any Party's request); and

(J) This order, as with the earlier order of 26 January 2011, is made by the Tribunal strictly without prejudice to any Party's case as regards the Tribunal's jurisdiction, the Claimants' First Application made by letter dated 12 December 2010, the Respondent's opposition to such First Application, and to any claim or defence by any Party as to the merits of the Parties' dispute."

(V) THE FIFTH ORDER ON INTERIM MEASURES OF 16 MARCH 2011

60. On 14 February 2011, a judgment was issued against the First Claimant in *Maria Aguinda et al. v. Chevron Texaco Corporation*, Proceeding No. 002-2003 before the Provincial Court of Sucumbíos in Lago Agrio, Ecuador (the "Lago Agrio Judgment").

61. By letter dated 23 February 2011, the Claimants renewed and extended their request for interim measures regarding the criminal proceedings pending in Ecuador against Chevron attorneys Messrs. Ricardo Veiga and Rodrigo Pérez (the "Fourth Request for Interim Measures").

62. By letter dated 24 February 2011, the Respondent informed the Tribunal of the measures that it had taken to comply with the Tribunal's Fourth Order for Interim Measures and requested the immediate revocation of that order.

63. By letter dated 28 February 2011, the Respondent requested that the Tribunal find that the Claimants had violated the Tribunal's prior Orders for Interim Measures or issue new interim measures to specifically prohibit the Claimants' alleged breaches.

64. By letter dated 4 March 2011, the Claimants alleged that the Respondent had violated the Tribunal's Fourth Order for Interim Measures and request relief in relation thereto (here, the "Fifth Request for Interim Measures").

65. The Tribunal issued its Procedural Order No. 7 dated 16 March 2011 (the "Fifth Order on Interim Measures"), which decided as follows:

> *"1. The Tribunal here addresses the four disputed applications in these arbitration proceedings regarding the Tribunal's several orders for interim measures dated 14 May 2010, 28 January 2011 and 9 February 2011; namely: (i) the first application by the Claimants made by letter dated 23 February 2011; (ii) the second application by the Respondent made by letter dated 24 February 2011; (iii) the third application by the Respondent made by letter dated 28 February 2011; and (iv) the fourth application by the Claimants made by letter dated 4 March 2011.*
>
> *2. First Application: As regards the first application by the Claimants for further interim measures against the Respondent in regard to the criminal proceedings in Ecuador concerning (inter alios) two of the Claimants' legal representatives (Messrs Ricardo Veiga and Rodrigo Pérez), the Tribunal refers to the Claimants' letter dated 23 February 2011, the Claimants' email message dated 25 February 2011 and the Respondent's letter dated 10 March 2011.*
>
> *3. Having considered the Parties' written submissions listed in paragraph 2 above (with attached exhibits), together with all other relevant circumstances in this case, the Tribunal does not consider it appropriate to grant the Claimants' application pleaded specifically at page 21 of their letter dated 23 February 2011, beyond maintaining the Tribunal's existing orders for interim measures.*
>
> *4. Second Application: As regards the second application made by the Respondent seeking the revocation of the Tribunal's order dated 9 February 2011, the Tribunal refers to Part II of the Respondent's letter dated 24 February 2011 and the Claimants' letter dated 4 March 2011.*
>
> *5. Having considered the Parties' written submissions listed in paragraph 4 above (with attached exhibits), together with all other relevant circumstances in this case, the Tribunal does not consider it appropriate to grant the Respondent's application or the Claimants' counter-application, beyond maintaining its existing order for interim measures dated 9 February 2011.*
>
> *6. Third Application: As regards the third application made by the Respondent in regard to alleged violations by the Claimants of the Tribunal's orders for interim measures and for further interim measures, the Tribunal refers to the Respondent's letter dated 28 February 2001 and the Claimants' letters dated 4 and 10 March 2001.*
>
> *7. Having considered the Parties' written submissions listed in paragraph 6 above (with attached exhibits), together with all other relevant circumstances in this case, the Tribunal does not consider it appropriate to grant the Respondent's application pleaded specifically*

at page 3 of its letter dated 28 February 2011, beyond maintaining the Tribunal's existing orders for interim measures.

8. Fourth Application: As regards the fourth application made by the Claimants in regard to alleged violations by the Respondent of the Tribunal's order dated 9 February 2011, the Tribunal refers to the Claimants' letter dated 4 March 2011.

9. Having considered the written submissions listed in paragraph 8 above (with attached exhibits), together with all other relevant circumstances in this case, the Tribunal does not consider it appropriate to grant the Claimants' application, beyond maintaining the Tribunal's existing order for interim measures dated 9 February 2011.

10. This procedural order shall not prejudice any issue as regards jurisdiction, admissibility or merits in these proceedings; nor shall it preclude any future application by any Party for interim measures or like relief in the event of any change in relevant circumstances."

(VI) THE FIRST INTERIM AWARD ON INTERIM MEASURES OF 25 JANUARY 2012

66. On 4 January 2012, the appellate division of the Provincial Court of Sucumbíos in Lago Agrio, Ecuador affirmed the first-instance judgment of the court in *Maria Aguinda et al. v. Chevron Texaco Corporation*, Proceeding No. 002-2003.

67. By letter dated 4 January 2012, the Claimants requested that the Tribunal immediately "(i) convert the order dated February 9, 2011 (the 'Interim Measures Order') into the form of an Interim Award, as the Tribunal contemplated in the Order; and (ii) request that the Republic of Ecuador inform the Tribunal, by this Friday, 6 January, 2012, of the steps that it intends to take to comply with the Interim Measures Order and prevent the Lago Agrio Judgment from becoming enforceable" (here, the "Sixth Request for Interim Measures").

68. By letter dated 9 January 2012, the Respondent responded to the Claimants' Sixth Request for Interim Measures and requested that the Tribunal vacate its Fourth Order on Interim Measures.

69. By letter dated 12 January 2012, the Claimants responded to the Respondent's letter dated 9 January 2012 and again requested that the Tribunal immediately issue an award on interim measures.

70. By letter dated 13 January 2012, the Respondent replied to the Claimants' letter dated 12 January 2012, disputing (inter alia) the Claimants' application and indicating that it would make a further reply "on or before 24 January 2012".

71. By letter dated 24 January 2012, as earlier indicated, the Respondent replied further to the Claimants' said letter dated 12 January 2012.

72. On 25 January 2012, the Tribunal held a procedural meeting by telephone conference-call with the Parties' legal representatives regarding procedural arrangements for an oral hearing to be held on 11-12 February 2012 in regard to the Parties' respective applications regarding interim measures.

73. Pending such oral hearing, the Tribunal issued its First Interim Award on Interim Measures dated 25 January 2012 (the "First Interim Award on Interim Measures"), the operative part of which decided as follows:

> *"1. Pursuant to Paragraph (C) of its Order dated 9 February 2011 and upon the following terms, the Tribunal confirms and re-issues such Order as an Interim Award pursuant to Articles 26 and 32 of the UNCITRAL Arbitration Rules, specifically Paragraph (E) of such Order; namely (as here modified):*
>
> *2. Bearing in mind the Respondent's several obligations under the BIT and international law, including the Respondent's obligation to carry out and provide for the enforcement of an award on the merits of the Parties' dispute in these arbitration proceedings (assuming this Tribunal's jurisdiction to make such an award), the Tribunal orders:*
>
> *(i) the Respondent 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; and*
>
> *(ii) the Respondent's Government shall continue to inform this Tribunal, by the Respondent's legal representatives in these arbitration proceedings, of all measures which the Respondent has taken for the implementation of this Interim Award;*
>
> *pending the February Hearing's completion and any further order or award in these arbitration proceedings;*
>
> *3. This Interim Award is and shall remain subject to modification (including its extension or termination) by the Tribunal at or after the February Hearing; and, in the meantime, any of the Parties may also apply to the Tribunal for such modification upon 72 hours' written notice for good cause shown;*
>
> *4. This Interim Award is made strictly without prejudice to the merits of the Parties' substantive and other procedural disputes, including (but not limited to) the Parties' respective applications to be heard at the February Hearing;*
>
> *5. This Interim Award shall take effect forthwith as an Interim Award, being immediately final and binding upon all Parties as an award subject only to any subsequent modification as herein provided, whether upon the Tribunal's own initiative or any Party's application; and*
>
> *6. This Interim Award, although separately signed by the Tribunal's members on three signing pages constitutes an "interim award" signed by the arbitrators under Article 32of the UNCITRAL Arbitration Rules."*

(VII) THE SECOND INTERIM AWARD ON INTERIM MEASURES OF 16 FEBRUARY 2012

74. On 11 February 2012, an oral hearing was held in Washington DC to hear the Parties' respective applications regarding interim measures.

75. Following that hearing, the Tribunal issued its Second Interim Award on Interim Measures dated 16 February 2012 (the "Second Interim Award on Interim Measures"), the operative part of which decided as follows:

1. The Tribunal determines that: (i) Article 26 of the UNCITRAL Rules (forming part of the arbitration agreement invoked by the Claimants under the Treaty) permits this Tribunal, at the request of a Party, to take interim measures (established in the form of an order or award) in respect of the subject-matter of the Parties' dispute; (ii) Article 32(1) of the UNCITRAL Rules permits this Tribunal to make (inter alia) an award in the form of an interim award; (iii) Article 32(2) of the UNCITRAL Rules provides that any award by this Tribunal is final and binding on the Parties, with the Parties undertaking to carry out such award without delay; and (iv) Articles VI.3(6) of the Treaty provides (inter alia) that an award rendered by this Tribunal pursuant to Article VI.3(a)(iii) of the Treaty under the UNCITRAL Rules shall be binding on the parties to the dispute (i.e. the Claimants and the Respondent), with the Contracting Parties (i.e. here the Respondent) undertaking to carry out without delay the provisions of any such award and to provide in its territory for its enforcement;

2. The Tribunal determines further that the Claimants have established, for the purpose of their said applications for interim measures, (i) a sufficient case as regards both this Tribunal's jurisdiction to decide the merits of the Parties' dispute and the Claimants' case on the merits against the Respondent; (ii) a sufficient urgency given the risk that substantial harm may befall the Claimants before this Tribunal can decide the Parties' dispute by any final award; and (iii) a sufficient likelihood that such harm to the Claimants may be irreparable in the form of monetary compensation payable by the Respondent in the event that the Claimants' case on jurisdiction, admissibility and the merits should prevail before this Tribunal;

3. Bearing in mind the Respondent's several obligations under the Treaty and international law, including the Respondent's obligation to carry out and provide for the enforcement of an award on the merits of the Parties' dispute in these arbitration proceedings and the Tribunal's mission (required under the arbitration agreement) efficaciously and fairly to decide the Parties' dispute by a final award, the Tribunal hereby orders:

(i) the Respondent (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 judgments by the Provincial Court of Sucumbíos, Sole Division (Corte Provincial de Justicia de Sucumbíos, Sala Unica de la Corte Provincial de Justicia de Sucumbíos) of 3 January 2012 and of 13 January 2012 (and, to the extent confirmed by the said judgments, of the judgment by Judge Nicolás Zambrano Lozada of 14 February 2011) against the First Claimant in the Ecuadorian legal proceedings known as "the Lago Agrio Case";

(ii) in particular, without prejudice to the generality of the foregoing, such measures to preclude any certification by the Respondent that would cause the said judgments to be enforceable against the First Claimant; and

(iii) the Respondent's Government to continue to inform this Tribunal, by the Respondent's legal representatives in these arbitration proceedings, of all measures which the Respondent has taken for the implementation of its legal obligations under this Second Interim Award;

until any further order or award made by the Tribunal in these arbitration proceedings;

4. The Tribunal determines that the Claimants shall be legally responsible, jointly and severally, to the Respondent for any costs or losses which the Respondent may suffer in performing its legal obligations under this Second Interim Award, as may be decided by the Tribunal within these arbitration proceedings (to the exclusion of any other jurisdiction); and further that, as security for such contingent responsibility the Claimants shall deposit within thirty days of the date of this Second Interim Award the amount of US$ 50,000,000.00 (United States Dollars Fifty Million) with the Permanent Court of Arbitration in a manner to be designated separately, to the order of this Tribunal;

5. The Tribunal dismisses the application made by the Respondent to vacate its order for interim measures of 9 February 2011;

6. The Tribunal's existing orders for interim measures (as recited in the First Interim Award) and the First Interim Award shall continue to have effect subject to the terms of this Second Interim Award;

7. This Second Interim Award is and shall remain subject to modification at any time before the Tribunal's final award in these arbitration proceedings; and, in the meantime, any of the Parties may also apply to the Tribunal for such modification upon seventy-two hours' written notice for good cause shown, including any material change in the legal or factual circumstances prevailing as at the date of the Hearing;

8. This Second Interim Award is made strictly without prejudice to the merits of the Parties' substantive and other procedural disputes, including the Respondent's objections as to jurisdiction, admissibility and merits;

9. This Second Interim Award shall take effect forthwith as an Interim Award, being immediately final and binding upon all Parties as an award subject only to any subsequent modification as herein provided, whether upon the Tribunal's own initiative or any Party's application; and

10. This Interim Award, although separately signed by the Tribunal's members on three signing pages constitutes an "interim award" signed by the three arbitrators under Article 32 of the UNCITRAL Arbitration Rules.

(VIII) THE THIRD INTERIM AWARD ON JURISDICTION AND ADMISSIBILITY OF 27 FEBRUARY 2012

76. The Tribunal issued its Third Interim Award on Interim Measures dated 16 February 2012 (the "Award on Jurisdiction and Admissibility"), the operative part of which decided as follows:

"5.1 For the reasons set out above, the Tribunal here decides as a third interim award:

5.2 The Tribunal declares that it has jurisdiction to proceed to the merits phase of these arbitration proceedings with the claims pleaded in the Claimant's Notice of Arbitration dated 23 September 2009, subject to the following sub-paragraphs;

5.3 As regards the claims pleaded by the Second Claimant (Texaco Petroleum Company or "TexPet") in the Claimants' said Notice of Arbitration, to reject all objections made by the Respondent as to jurisdiction and admissibility by its Memorial on

Jurisdiction and Admissibility dated 26 July 2010, its Reply Memorial on Jurisdiction Objections dated 6 October 2010 and its further submissions at the Jurisdiction Hearing on 22 and 23 November 2010;

5.4 *As regards the claims pleaded by the First Claimant (Chevron Corporation or "Chevron") in the Claimants' said Notice of Arbitration, to reject all objections made by the Respondent as to jurisdiction and admissibility in its said memorials and further submissions, save those relating to the jurisdictional objections raised against the First Claimant as a investor under Article I(1)(a) alleging a "direct" investment under Article VI(1)(c) and an "investment agreement" under Article VI(1)(a) of the Ecuador–USA Treaty of 27 August 1993 which are joined to the merits of the First Claimants' claims under Article 21(4) of the UNCITRAL Arbitration Rules forming part of the Parties' arbitration agreement under the Treaty; and*

5.5 *As regards the Parties' respective claims for costs, the Tribunal here makes no order save to reserve in full its jurisdiction and powers to decide such claims by a later order or award in these arbitration proceedings."*

PART III: THE TRIBUNAL'S REASONS

77. The Tribunal confirms and restates with full force and effect its earlier orders and awards on interim measures. Each of these orders and awards was and remains binding upon the Parties under the Treaty, the UNCITRAL Rules and international law. Under Article VI of the Treaty and Article 32(3) of the UNCITRAL Rules, the Parties undertook to carry out any award without delay, including the First and Second Interim Awards on Interim Measures of 25 January and 16 February 2012.

78. As regards the Respondent, these orders and awards were directed not only to the Respondent's executive branch but to all branches and organs that make up the Respondent as a State, including its judiciary and legislature. Neither disagreement with the Tribunal's orders and awards on interim measures nor constraints under Ecuadorian law can excuse the failure of the Respondent, through any of its branches or organs, to fulfil its obligations under international law imposed by the Treaty, the UNCITRAL Rules and the Tribunal's orders and awards thereunder, particularly the First and Second Interim Awards on Interim Measures.

79. The Tribunal determines that the Lago Agrio Judgment was made final, enforceable and subject to execution within Ecuador by the Respondent no later than 3 August 2012 (upon its judiciary's certifying the Lago Agrio Judgment's enforceability), in violation of the Tribunal's First and Second Interim Awards requiring the Respondent, respectively, "to take all measures at its disposal" and "to take all measures necessary" to suspend or cause to be suspended the enforcement and recognition both within and without Ecuador of that Lago Agrio Judgment.

80. Thereafter, the status accorded by the Respondent to the Lago Agrio Judgment led directly to what the Tribunal was seeking expressly to preclude temporarily by its orders and awards on interim measures, namely the attempted enforcement and execution of the Lago Agrio Judgment against the First Claimant (with its subsidiary companies) by persons acting in the name of the Lago Agrio plaintiffs not only within but also outside Ecuador, currently in the state courts of Canada, Brazil and Argentina and possibly in the near future also in the state courts of other countries.

81. Accordingly, the Tribunal requires the Respondent to show cause to this Tribunal why the Respondent should not now compensate the First Claimant for any harm caused by the Respondent's violations of the First and Second Interim Awards in regard to the Lago Agrio Judgment's enforcement and execution, both within and outside Ecuador. The Tribunal intends presently to establish a further procedural timetable to address such compensation (including any issues as to causation and quantification) in consultation with the Parties, by a further procedural order.

82. Moreover, from its perspective under international law, this Tribunal is the only tribunal with the power to restrain the Respondent generally from aggravating the Parties' dispute and causing irreparable harm to the Claimants in regard to the enforcement and execution of the Lago Agrio Judgment. Such restraint has not been achieved by any state court (including courts in the USA); nor could it be in the circumstances of this most unusual case. The Tribunal therefore confirms and declares, as a matter of international law, that the Respondent has a continuing obligation to ensure that the commitments that it has given under the Treaty and the UNCITRAL Rules are not rendered nugatory by the finalisation, enforcement or execution of the Lago Agrio Judgment in violation of the First and Second Interim Awards.

83. The Tribunal bears much in mind that the amounts at stake are potentially huge in these arbitration proceedings, measured in multiple billions of US dollars. For the Claimants, that means that an award of damages expressed in tens of billions of US dollars could provide no adequate remedy, if their full case were to prevail against the Respondent and if the Lago Agrio Judgment were in the meantime enforced and executed. Conversely for the Respondent, on these same assumptions, that means an award of damages could nonetheless be recovered by the Claimants, albeit not in tens of billions, but in many millions or even billions of US dollars.

84. The Tribunal also takes note that the first part (probably a substantial part) of any recoveries on execution of the Lago Agrio Judgment outside Ecuador appears unlikely to be paid to the Lago Agrio plaintiffs in Ecuador, but rather to foreign funding and other financial institutions associated with persons acting in their name, based in countries other than Ecuador.

85. It is therefore difficult now to exaggerate the risks facing the First Claimant and thus, indirectly, the Respondent also from the enforcement and execution of the Lago Agrio Judgment. In the Tribunal's view, based on the materials filed by both sides in this arbitration, there are increasingly grave risks that enforcement and execution of the Lago Agrio Judgment against the First Claimant (with its subsidiary companies) will imperil to a very significant extent the overall fairness and the efficacy of these arbitration proceedings.

86. In accordance with the existing timetable requested by the Respondent, the Tribunal has yet to decide any of the substantive merits of this dispute; and nothing in any order or award (including this award) should be read as pre-judging any of those merits.

PART IV: THE OPERATIVE PART

Accordingly, the Tribunal now makes this Fourth Interim Award as follows:

1) ***The Tribunal declares that the Respondent has violated the First and Second Interim Awards under the Treaty, the UNCITRAL Rules and international law in regard to the finalisation and enforcement subject to execution of the Lago Agrio Judgment within and outside Ecuador, including (but not limited to) Canada, Brazil and Argentina;***

2) ***The Tribunal decides that the Respondent shall show cause, in accordance with a procedural timetable to be ordered by the Tribunal separately, why it (the Respondent) should not compensate the First Claimant for any harm caused by the Respondent's violations of the First and Second Interim Awards;***

3) ***The Tribunal declares and confirms that the Respondent was and remains legally obliged under international law to ensure that the Respondent 's commitments under the Treaty and the UNCITRAL Rules are not rendered nugatory by the finalisation, enforcement or execution of the Lago Agrio Judgment in violation of the First and Second Interim Awards; and***

4) ***The Tribunal states expressly that: (i) it has not yet decided any of the substantive merits of the Parties' dispute; and (ii) this award is made strictly without prejudice to those merits, including all claims advanced by the Claimants and all defences advanced by the Respondent.***

PLACE (SEAT) OF ARBITRATION: The Hague, The Netherlands
DATE: 7 February 2013

THE TRIBUNAL:

Dr. Horacio A. Grigera Naón

Professor Vaughan Lowe

V.V. Veeder (President)

PLACE (SEAT) OF ARBITRATION: The Hague, The Netherlands
DATE: 7 February 2013

THE TRIBUNAL:

Dr. Horacio A. Grigera Naón

Professor Vaughan Lowe

V.V. Veeder (President)

PLACE (SEAT) OF ARBITRATION: The Hague, The Netherlands
DATE: 7 February 2013

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