

Professor Philippe Sands QC

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By email

10 January 2013

Dear Aurélia and Paul-Jean

Victor Pey Casado et Fondation Président Allende c. République du Chili (Affaire CIRDI No. ARB/98/2)

Many thanks for your email of 6 January 2013, together with attachments, including the formal challenge to my sitting as arbitrator in these proceedings.

I have reviewed the attached letter (of 18 December 2013) with care and attention, and do not consider that it sets forth the basis for a successful challenge to my continued role as arbitrator. In so concluding I have had regard to the ICSID Convention and the substantive issues likely to be raised in the limited phase of these proceedings (they do not appear to be concerned in any way with the issue of the immunity of a former head of state in criminal proceedings before a national court, the matter to which my past professional activities and views cited have been directed).

Nevertheless, I consider the proper approach is to allow these proceedings to continue without the distraction posed by my involvement. The interests of the parties and the ICSID system should always be to the fore, all the more so in a case such as this, with its unique history.

These proceedings involve only a very limited phase (quantum, following the findings on jurisdiction and liability). They can and should be addressed expeditiously and without undue distraction, as I expected to be the case when I accepted appointment. It hardly seems appropriate to expend undue effort in taking the matter raised by the Claimant to decision. This is all the more so where the Respondent has raised issues that would require correction and/or response by reference to information that is subject to professional confidentiality (and could not be provided without permission obtained from third parties, which in certain respects would certainly not be granted).

In preparing my letter of 11th September 2013 I took great care to avoid any suggestion as to which party (if either) had leaked material to the press, by adopting a neutral form of words. The fact that the Respondent has interpreted my words in a different way merely serves to underscore the likelihood of further difficulties along the way.

For these reasons, and in the face of a formal challenge, stepping aside is the proper course. I regret that the Claimant will be required to appoint a new arbitrator, but am happy to avoid adding to the burdens of my two esteemed co-arbitrators.

I take the opportunity to express the hope that the parties might in due course reach a satisfactory outcome in these lengthy proceedings, and thank Aurélia and Jean-Paul for their excellent assistance.

Yours sincerely,

